



भारत का राजपत्र

The Gazette of India

प्राधिकार द्वारा प्रकाशित
PUBLISHED BY AUTHORITY

सं. 34]

नई दिल्ली, शनिवार, अगस्त 22, 1992/भावण 31, 1914

No. 34]

NEW DELHI, SATURDAY, AUGUST 22, 1992/SRAVANA 31, 1914

इस भाग के भिन्न पृष्ठ सभ्या दो जाती हैं जिससे कि यह भाग दोनों दो भागों
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—भाग 3—उप-भाग (II)
PART II—Section 3—Sub-Section (II)

(रक्त मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
Ministry of Defence)

विधिध एवं स्वायत मंत्रालय

(विधि कार्य विभाग)

सूचना

नई दिल्ली, 20 जुलाई, 1992

का. फा. 2175—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में
सकाम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री पृथ्वीराज मल्होत्रा,
एड्सोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक
आवेदन इस बात के लिए दिया है कि उसे करनाल जिला (हरियाणा
राज्य) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी
भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के बौद्ध दिन के भीतर
लिखित रूप से मेरे पास भेजा जाए।

[सं. फा. 5(177)/92-न्यायिक]
पी.सी. कण्णन, सकाम प्राधिकारी

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)

NOTICE

New Delhi, the 20th July, 1992

S.O. 2175.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule

4 of the said Rules, by Shri Prithvi Raj Malhotra, Advocate for appointment as a Notary to practise in Karnal District (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(177)/92-Judl.]
P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का. फा. 2176—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में
सकाम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री वर्षभिल गोइ,
एड्सोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक
आवेदन इस बात के लिए दिया है कि उसे गाजियाबाद में
व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार
का आपेक्ष इस सूचना के प्रकाशन के बौद्ध दिन के भीतर लिखित रूप
से मेरे पास भेजा जाए।

[सं. फा. 5(178)/92-न्यायिक]
पी.सी. कण्णन, सकाम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2176.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Darshanand Gaur, Advocate for appointment as a Notary to practise in Ghaziabad (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(178)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का आ 2177—नोटरोज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री स्वर्णसिंह, एड्वोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक शावेदाह यात्रा के लिए दिया है कि उसे पहाड़ी गढ़ चिंजन, जिला कुरुक्षेत्र (हरियाणा) में व्यवसाय करने के लिए नोटरों के रूप में नियुक्त पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास मेजा जाए।

[सं. का० 5(179)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2177.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Swaran Singh, Advocate for appointment as a Notary to practise in Jalandhar (Punjab).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(179)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का आ 2178—नोटरोज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री रविन्द्र सहाय सक्सेना, एड्वोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक शावेदाह यात्रा के लिए दिया है कि उसे बूद्धी जिला बूद्धी (राजस्थान) में व्यवसाय करने के लिए नोटरों के रूप में नियुक्त पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास मेजा जाए।

[सं. का० 5(180)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2178.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Ravindra Sahay Saxena, Advocate for appointment as a Notary to practise in Bundi, Distt. Bundi (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(180)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का आ 2179—नोटरोज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री धर्म पाल रविश, एड्वोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक शावेदाह यात्रा के लिए दिया है कि उसे पहाड़ी गढ़ चिंजन, जिला कुरुक्षेत्र (हरियाणा) में व्यवसाय करने के लिए नोटरों के रूप में नियुक्त पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास मेजा जाए।

[सं. का० 5(181)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2179.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Dharam Pal Ravish, Advocate for appointment as a Notary to practise in Pahova Sub-Division, Distt. Kurukshetra (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(181)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का आ 2180—नोटरोज नियम 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सरदार सिंह यादव एड्वोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक शावेदाह यात्रा के लिए दिया है कि उसे बागपाल (जिला मेरठ, उत्तर प्रदेश) में व्यवसाय करने के लिए नोटरों के रूप में नियुक्त पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास मेजा जाए।

[सं. 5(182)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2180.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Sardar Singh Yadav, Advocate for appointment as a Notary to practise in Baghpat, Distt. Meerut (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(182)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई विल्ली, 20 जुलाई, 1992

का.आ. 2181.—नोटरोज नियम, 1950 के नियम 6 के अनुमति में संशम प्राधिकारी द्वारा यह सूचना दी जाता है कि श्री शोकान्त जेणा एडवर्केट ने उक्त प्राधिकारी को उक्त विधान के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे सुंदूर (राजस्थान) में अवास करने के लिए नोटरी के रूप में नियुक्त पर किया गया प्रकार का आपक्ष इस सूचना के प्रकाशन के चौदह दिन के मात्रात नियुक्त रूप से भेजे गये जाएं।

[मं. का० ५(183) ९२-न्यायिक]

पौ. सा. कण्णन, मध्यम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2181.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Shrikant Joshi, Advocate for appointment as a Notary to practise in Jhunjhunu (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(183)/92-Judl.]

P. C. KANAN, Competent Authority

गृह मंत्रालय
(आन्तरिक सुरक्षा विभाग)
(पुनर्वास प्रभाग)

नई विल्ली, 3 जुलाई, 1992

का.आ. 2182.—निष्कान्त सम्पत्ति प्रबन्ध प्रधिनियम, 1950 (1950 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एवं द्वारा गृह मंत्रालय व न्याय विभाग व पुनर्वास प्रभाग में सदृक्ष सचिव श्री वी. विश्वनाथन को प्रधिनियम के द्वारा अधिकार उसके अधीन भारतीय सरकार को सौंपे गए कार्यों के निपादन के उद्देश्य से निष्कान्त सम्पत्ति का महानिरीक्षक नियुक्त करता है।

2. इसके द्वारा दिनांक 8-7-91 की अधिसूचना सं 1(3)/विशेष कानून/१०-एस-११/एस. (ख) का अधिकरण किया जाता है।

[सं. का० १(३)/विशेष कानून/१०-एस-११/एस. (ख)]

कुलबीप राय, उप सचिव,

MINISTRY OF HOME AFFAIRS

(Department of Internal Security)
(Rehabilitation Division)

New Delhi, the 3rd July, 1992

S.O. 2182.—In exercise of the power conferred by Section 5 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby appoints Shri V. Viswanathan, Joint Secretary in the Ministry of Home Affairs, Department of Justice and Rehabilitation Division as the Custodian General of Evacuee Property for the purpose of performing functions assigned to such Custodian General by or under the said Act.

2. This supersedes notification No. 1(3)/Spl. Cell/90-SS.II/S(B), dated the 8th July, 1991.

[No. 1(3)/Spl Cell/90-SS.II/S(B)]

KULDIP RAI, Dy. Secy.

नई विल्ली, 3 जुलाई, 1992

का.आ. 2183.—विस्थापित व्यक्ति (प्रतिवार तथा पुनर्वास) प्रधिनियम, 1954 (1954 का 44) की धारा 3 की उप धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एवं द्वारा गृह मंत्रालय न्याय विभाग व पुनर्वास प्रभाग में मंत्रीक सचिव श्री वी. विश्वनाथन की उक्त प्रधिनियम के द्वारा अधिकार उसके अन्तर्गत मुख्य बन्दोबस्त आयुक्त का सौंपे गए कार्यों के निपादन के उद्देश्य से मुख्य बन्दोबस्त आयुक्त नियुक्त नियुक्त करती है।

2. इसके द्वारा दिनांक 8-7-91 की अधिसूचना सं 1(3)/विशेष कानून/१०-एस-११/एस. (ख) का अधिकरण किया जाता है।

[सं. का० १(३)/विशेष कानून/१०-एस-११/एस. (ख)]

कुलबीप राय, उप सचिव

New Delhi, the 3rd July, 1992

S.O. 2183.—In exercise of the power conferred by Sub-Section (1) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri V. Viswanathan, Joint Secretary in the Ministry of Home Affairs, Department of Justice and Rehabilitation Division as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Chief Settlement Commissioner by or under the said Act.

2. This supersedes Notification No. 1(3)/Spl.Cell/90-SS.II/Settlement (A) dated the 8th July, 1991.

[No. 1(3)/Spl.Cell/90-SS.II/S(A)]

KULDIP RAI, Dy. Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई विल्ली, 31 जुलाई, 1992

का.आ. 2184.—राष्ट्रीयकृत बैंक (प्रबन्ध और प्रकीर्ण उपबन्ध) स्कीम, 1980 के खण्ड 5 के उपखण्ड (1), खण्ड 7 और खण्ड 8 के उपखण्ड (1) के माध्य पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में, केन्द्रीय सरकार, आर्थिक रिजर्व बैंक के माध्य परामर्श करने के पश्चात्, एवं द्वारा श्री के.ए. बैंस, आर्ए ए. एस. (पंजाब: 1961) को 1 अगस्त, 1992 से या उनके द्वारा कार्यभार अर्हण करने की तारीख से, जो श्री बैंस में है, अगला आदेश जारी होने तक, सल्काल रूप से अपार्ण जान (एवजार्पण) के आधार पर प्रजाव एवं सिव्ह बैंक के अध्यक्ष एवं प्रबन्ध निवेशक के रूप में नियुक्त करती है।

[सं. का० १(३)/१०-एस-११/वी.आ.०-१]

के जा नाशत निवेशक

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 31st July, 1992

S.O. 2184.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 5, clause 7 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri K. S. Bains, IAS (Punjab: 1961) as the Chairman and Managing Director of the Punjab and Sind Bank, for the period from the 1st August, 1992, or the date of his taking charge, whichever is later, and until further orders, on immediate absorption basis.

[No. 9/22/92-B.O.I]

K. G. GOEL, Director

भारतीय रिजर्व बैंक
(प्रामाण शायोजना और ऋण विभाग)
(केन्द्रीय कार्यालय)
बम्बई, 27 जुलाई, 1992

का आ 2185—भारतीय रिजर्व बैंक अधिनियम, 1934 की आरा 42 की उपधारा (7) तथा बैंककारी विनियमन अधिनियम, 1949 को आरा 56 के साथ पछिं आरा 24 का द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय रिजर्व बैंक इसके द्वारा निर्देश देता है कि महाराष्ट्र स्टेट कॉ-ऑपरेटिव बैंक लि. अनिवार्य (अप्रत्यावर्तनीय) रूपया जमायोजना के अंतर्गत संप्राप्ति जमाराशयों की गणना नकदी प्रारंभित अनुपात सांविधिक तरलसां अनुपात के प्रयोजनार्थ शुद्ध मांग एवं भियादी देयताओं के भाग के रूप में 24 जुलाई, 1992 को समाप्त पश्चात से नहीं कर सकेंगी।

[प्रामाणिक सं आरएफ 86/ए 12(24)-92/93]
सा. सौ. तारापोर, उप गवर्नर

RESERVE BANK OF INDIA
(Rural Planning and Credit Department)
(Central Office)

Bombay, the 27th July, 1992

S.O. 2185.—In exercise of the powers conferred by Sub-Section (7) of Section 42 of the Reserve Bank of India Act, 1934 and Section 24A read with Section 56 of the Banking Regulation Act, 1949 Reserve Bank of India hereby directs that the deposits under the non-resident (non-repatriable) rupee deposit scheme mobilised by Maharashtra State Co-operative Bank Ltd, shall not be considered as part of Net Demand and Time Liabilities for the purpose of Cash Reserve Ratio/Statutory Liquidity Ratio requirements from the fortnight ended 24th July, 1992.

[Ref. RPCD No. RF. 86/A 12(24)-92/93]
S. S. TARAPORE, Dy Governor

जल संसाधन भवालय

नई दिल्ली, 30 जुलाई, 1992

का आ 2186—केन्द्रीय सरकार, जल संसाधन भवालय, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण से एसद्वारा इस भव लिये के अधीनस्थ कार्यालय नामक भूमिजल बोर्ड के जयपुर स्थित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

जल कार्यालय का पता है—

केन्द्रीय भूमिजल बोर्ड, सी-13,

सदाई जर्यासह मार्ग, बड़ी पाक, जयपुर।

[सं 1/2/92-हिन्दी]
जोगिन्दर सिंह, उप सचिव

MINISTRY OF WATER RESOURCES

New Delhi, the 30th July, 1992

S.O. 2186—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government in the Ministry of Water Resources hereby notifies the Jaipur office of the Central Ground Water Board, which is a subordinate office of the Ministry, where more than 80 per cent staff has acquired working knowledge of Hindi. The address of this office is as under—

Central Ground Water Board C-15, Sawai Jai Singh Highway, Bampark, Jaipur.

[No 1/2/92-Hindi]
JOGINDER SINGH, Dy. Secy

पैट्रोलियम और प्राकृतिक गैस भवालय
नई दिल्ली, 28 जुलाई, 1992

का आ 2187—केन्द्रीय सरकार को यह प्रतीत होता है कि लोक हित में ऐसा आधारक है कि गुजरात राज्य से काडला से पजाब राज्य में भट्टिन्डा तक राष्ट्रस्थान और हरियाणा से होकर पैट्रोलियम के परिवहन के लिए हव्यियन ऑफिस कार्पोरेशन लिमिटेड द्वारा पाष्पलाइन बिलाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाष्पलाइन बिलाई के प्रयोजनों के सिए इस अधिसूचना से उपबद्ध अनुसूची में अंजित भूमि के उपयोग के अधिकार का अर्जन करना आधारक है, भत केन्द्रीय सरकार, पैट्रोलियम और खनिज पाष्पलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की आरा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

उक्त अनुसूची में अंजित भूमि में हित बढ़ कोई अविस्तर, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां जनता को उपलब्ध करा दिए आने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाष्पलाइन बिलाई में स्थापना लिखित रूप में श्री एन एच कुमार, संथ प्राधिकारी, इंडियन ऑफिस कार्पोरेशन लिमिटेड कोडला-भट्टिन्डा पाष्पलाइन परियोजना, 'फिरम कोर्ट' प्लाट न 85 सेक्टर-I गार्डीन्स (कल्ड) गुजरात को कर सकेगा।

प्राधिसूचना

तहसील अंतर	जिला काञ्चा	राज्य गुजरात
गांव का नाम	सर्वेक्षण संख्या	क्षेत्रफल
	हेक्टेयर	प्रारं चर्ट मीटर
1	2	3
वरसाणा	77 78 79	00 02 70 00 10 25 00 01 04

[आर-31015/5/92-ओ पार-I]

कुलसीप सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 28th July, 1992

S.O. 2187—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification,

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein,

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority.

Indian Oil Corporation Ltd., Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat :-

SCHEDULE

Tehsil : ANJAR District : KACHCHH State : GUJARAT

Name of Village	Survey No.	Area		
		Hectare	Are	Square metres
1	2	3	4	5
Varsana	77	0	02	70
	78	0	10	25
	79	0	01	04

[No R-31015/5/92/C.R.I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 28 जुलाई, 1992

का आ. 2188-वेन्ट्रीय सरकार को यह ग्राहीत होता है कि लोक हित में ऐसा आवश्यक है कि गुजरात राज्य से काढ़ा से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पैट्रोलियम के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा पाइपलाइन बिलाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिलाने के प्रयोजनों के लिए इस अधिसूचना ! उपायद अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है, आन केन्द्रीय सरकार, पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उनमें उपयोग के अधिकार का अर्जन करने के अपने आवश्यकीय क्षेत्रों को घोषणा करती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियोगी जनता को उपलब्ध करा दिए जाने की सारेष्व से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिलाने में आपत्ति लिखित रूप में श्री एन. एच. कुम्हार, सकार प्राधिकारी, इंडियन ऑयल कार्पोरेशन लिमिटेड, कांडला-मटिन्डा पाइपलाइन परियोजना "किरन कोट" ज्लाट नं. 85 सेक्टर-1, गांधीधाम (कच्छ) गुजरात को कर सकेगा।

अनुसूची

तहसील : भजाउ	जिला : कच्छ	राज्य : गुजरात
गांव का नाम	सर्वेक्षण संख्या	शेतकर
3	2	3 4 5
नानी चौरई	394	00 41 50
	393/2	00 33 10
	393/1	00 01 40
	392/1	00 20 34
	392/2	10 10 40

[सं आर. 31015/5/92-ओ आरा-I)]

कुलदीप सिंह, प्रबर सचिव

New Delhi, the 28th July, 1992

S.O. 2188.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority, Indian Oil Corporation Ltd, Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat :—

SCHEDULE

Tehsil : BHACHAU District : KACHCHH State : GUJARAT

Name of Village Survey No. Area

1	2	Hectare	Are	Square metres
		3	4	5
Nani Chirai	394	0	41	50
	393/2	0	33	10
	393/1	0	01	40
	392/1	0	20	34
	392/2	0	10	40

[No. R-31015/5/92/O.R.I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2189-केन्द्रीय सरकार को यह प्रतीत होता है कि लोक हित में ऐसा आवश्यक है कि गुजरात राज्य में काढ़ा से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पैट्रोलियम के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा पाइपलाइन बिलाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिलाने के प्रयोजनों के लिए इस अधिसूचना से उपायद अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है यह : केन्द्रीय सरकार, पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आवश्यकीय क्षेत्रों को घोषणा करती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियोगी जनता को उपलब्ध करा दिए जाने को गोप्य से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिलाने में आपत्ति लिखित रूप में श्री एन. एच. कुम्हार, सकार प्राधिकारी, इंडियन ऑयल कार्पोरेशन लिमिटेड, कांडला-भटिन्डा पाइपलाइन परियोजना "किरन कोट" ज्लाट नं. 85, सेक्टर-1, गांधीधाम (कच्छ) गुजरात को कर सकेगा।

प्राप्ति				
तहसील : रापर	जिला : कच्छ	राज्य : गुजरात	1	2
गांव का नाम	मर्वेक्षण संख्या	क्षेत्रफल	बांधनसर	3
		हेक्टेयर आर वर्ग मीटर		4
				5
1	2	3	4	5
देवरवा	152/3	00 13 14	93	00 07 56
	152/1	00 02 34	87	00 28 26
	151	00 13 68	86	00 07 50
लाखगढ़	163/2	00 04 50	69	00 49 14
	163/3	00 09 00	64	00 32 04
	162	00 43 20	55	00 41 58
	164/2	00 09 90		
	171	00 45 00		
	172/1	00 18 00		
	180	00 45 00		
	73	00 46 80		
	72	00 21 60		
	76/1	00 07 20		
	76/2	00 17 10		
	51	00 16 20		
	53	00 19 80		
	48/1	00 19 60		
	48/2	00 03 24		
	45	00 09 90		
प्रांधेसर	597/2	00 13 50		
	597/1	00 07 20		
	598/1	00 05 40		
	552/2	00 01 35		
	552/1	00 10 80		
	553/2	00 08 10		
	554/3	00 16 20		
	554/1	00 23 40		
	555	00 20 70		
	558/	00 23 40		
	559	0 34 20		
	562/2	00 09 90		
	562/2	00 36 00		
प्रांधेसर (अमर.)	563/1	00 30 60		
	564	00 32 40		
	497/2	00 10 80		
	496	00 18 00		
	495	0 09 00		
	493	00 18 00		
	494	00 10 80		
	491	00 37 80		
	488	00 07 20		
	454	00 17 10		
	455	00 26 10		
	458	01 04 40		
	447/1	00 12 60		
	447/2	00 30 60		
	490	00 05 40		

1	2	3	4	5
बांधनसर	93	00 07 56		
	87	00 28 26		
	86	00 07 50		
	69	00 49 14		
	64	00 32 04		
	55	00 41 58		

[सं आर- 31015/5/92-ओ आर-1]

कृ लक्ष्म पिह, आवर सचिव

New Delhi, the 28th July, 1992

2189.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority, Indian Oil Corporation Ltd., Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat:—

SCHEDULE

Tehsil : RAPAR District : KACHH State : GUJARAT

Name of Village	Survey No.	Area			
		Hectare	Are	Square metres	
1	2	3	4	5	6
Dedrva	152/3	00	13	14	
	152/1	00	02	34	
	151	00	13	68	
Lakhagadh	163/2	00	04	50	
	163/3	00	09	00	
	162	00	43	20	
	164/3	00	09	90	
	171	00	45	00	
	172/1	00	18	00	
	180	00	45	00	
	73	00	46	80	
	72	00	21	60	
	76/1	00	07	20	
	76/2	00	17	10	
	51	00	16	20	
	53	00	19	80	
	48/1	00	19	80	
	48/2	00	19	24	
	45	00	09	90	

1	2	3	4	5
Adesar	597/2	00	13	50
	597/1	00	07	20
	598/1	00	05	40
	552/2	00	01	35
	552/1	00	10	80
	553/2	00	08	10
	554/3	00	16	20
	554/1	00	13	40
	555	00	20	71
	558	00	23	40
	559	00	34	20
	562/2	00	09	90
	562/1	00	36	00
	563/1	00	30	60
	564	00	32	40
	497/2	00	10	80
	496	00	18	00
	495	00	09	00
	493	00	18	00
	494	00	10	80
	491	00	37	80
	488	00	07	20
	454	00	17	10
	455	00	26	10
	458	01	04	40
	447/1	00	12	60
	447/2	00	30	60
	490	00	05	40
Bambhansar	93	00	07	56
	87	00	28	26
	86	00	07	56
	60	00	49	14
	64	00	32	04
	55	00	41	58

[No. R-31015/S/92/O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जूलाई, 1992

का. आ. 2190—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 4502 में 4505 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का का.आ. 2686, विनाक 13 अक्टूबर, 1990 द्वारा इस अधिसूचना से सलग अनुसूची में वर्णित भूमि का अधिप्राप्त करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात नाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

प्रम. प्रब्र केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से सलग अनुसूची में तिन्हिंलिखित मंशोधन करती है।

पृष्ठ संख्या 4502 दाहिने भाग में, सर्वे न. 393/1 के सामने गांव के नाम के कालम (1) में लिखे, 'सनानी चीरई' स्थान पर 'सनानी चीरई' पढ़े।

पृष्ठ संख्या 4503 के बाये भाग में, कालम (2) में सर्वे नम्बर 4 के सामने लिखे, 'मोटी चीरई' को उमी कालम में सर्वे नम्बर 546 के सामने पढ़े।

पृष्ठ संख्या 4503 के बाये भाग के, अन्तिम पक्कि पर मर्यादित 326 के सामने कालम (1) में 'चोपड़वा' पढ़े।

पृष्ठ संख्या 4503 के दाहिने भाग में, सर्वे न. 1202 के सामने कालम (1) में 'भचाऊ' पढ़े।

पृष्ठ संख्या 4503 के दाहिने भाग में, सर्वे नम्बर 1880 के सामने कालम (1) में लिखे 'भयऊ' के स्थान पर भचाऊ पढ़े।

पृष्ठ संख्या 4503 के दाहिने भाग में, कालम (1) के सर्वे नम्बर 807/1 के सामने लिखे 'बोच' के स्थान पर, उमी कालम में सर्वे नम्बर 805 के सामने 'बोध' पढ़े।

पृष्ठ संख्या 4504 के बाये भाग में, छाउबाला के कालम 2 में लिखे सर्वे नम्बर '835' के स्थान पर '825' पढ़े।

पृष्ठ संख्या 4504 के दाहिने भाग में, सबसे पहले पंक्ति में सर्वे नम्बर 194 के सामने कालम (1) में लिखे 'धरणा' को उसी कालम में दूसरे पंक्ति में सर्वे नम्बर 195 के सामने पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, धरणा गांव के सर्वे नम्बर 66 के सामने कॉलम (4) में लिखे, '15' के स्थान पर '16' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, धरणा गांव के सर्वे नम्बर 54/1 के सामने कॉलम (3) में लिखे, '50' के स्थान पर '00' पढ़े।

पृष्ठ संख्या 4504 के दाहिने भाग में, धरणा गांव के कालम (2) में, सर्वे नम्बर '553' के स्थान पर '55/3' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, धरणा गांव के सर्वे नम्बर 533 के सामने कालम (3) पर '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, लाकडिया गांव के सर्वे नम्बर 758 के सामने कॉलम (3) में लिखे, '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के बाये भाग में, सर्वे नम्बर 822 के सामने कॉलम (3) में लिखे, '50' के स्थान पर '9/00' पढ़ें।

पृष्ठ संख्या 4505 के बाये भाग में, सर्वे नम्बर 1091/1 के सामने कॉलम (4) में लिखे, '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, ऊपर से छोटी पंक्ति पर सर्वे नम्बर 208 के सामने कालम (3) में लिखे '05' के स्थान पर '00' पढ़े।

पृष्ठ संख्या 4505 के दाहिने भाग में, ऊपर से दसवीं पंक्ति पर सर्वे नम्बर 388 के सामने कालम (3) में लिखे, '77' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, सर्वे नम्बर 377/1 के सामने कॉलम (1) में लिखे, 'लाकडिया' के स्थान पर 'शिवलङ्घा' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, लाकडिया गांव के कालम (2) में लिखे, सर्वे नम्बर '300' के स्थान पर '380' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में लाकडिया गांव के सर्वे नम्बर 323 के सामने कॉलम (3) में लिखे '10' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में लाकडिया गांव के सर्वे नम्बर 344/1 के सामने कॉलम (4) पर लिखे '30' के स्थान पर '10' पढ़े—

ऐसी भूमि में जिसका बाबत उपरोक्त संशोधन आरोपित किया गया है, हितबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इनकीस दिन के भीतर उक्त भूमि के सम्बूद्ध या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के व्यक्ति किए जाने के विरुद्ध उक्त अधिनियम को धारा 5 की उपधारा (1) के निवंधनों के प्रनुसार आधेप कर सकेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, खसरा संख्या व शेकफल की बाबत उक्त अधिनियम की धारा 5(1) के निवंधनों के प्रनुसार इकलीस दिन की उक्त अवधि यह अधिसूचना जारी को जाने की तारीख से प्रारम्भ होगी।

[संख्या ओ-31015/5/92-ओ.आर-1]

कुलदीप सिंह, अवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2190.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2686, dated the 13th October, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4505 to 4508, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4506, in village Motichirai, in column 3, against survey no. 199, for "90" read "00";

at page 4507, in column 1, for the village name "Garna" read "Garana", in column 2, for survey no. "121/1" read "121/2";

at page 4508, in village Shivilakha, in column 1, against survey no. 377/1, the word "Lakadiya" shall be omitted, in column (2), for survey no. "389" read "379".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]
KULDIP SINGH, Under Secy.

मुख्य पत्र

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2191—केन्द्र सरकार ने प्रकाशित और खालिज पाइप लाइन (भूमि में उपयोग के अधिकार का प्रार्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपर्युक्त (ii) पृष्ठ संख्याक 4508 से 4509 में प्रकाशित भातर सरकार, पट्रोलियम और प्राकृतिक

गैस मंत्रालय की अधिसूचना का. आ. 2687 विना 13 अक्टूबर, 1990 द्वारा हस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के भयने आशय को सूचना यां।

और केन्द्र सरकार की जानकारी में यह बा. लाइ गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

प्रा. अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से सभी अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4508 पर गांव के नाम के कालम में लिखे "मोठांगह" के स्थान पर "गाठोरोह" पढ़ें।

पृष्ठ संख्या 4509 पर गांव के शेकफल टेक्टार के कालम में "09" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4509 पर पंक्ति 25 पर सर्वे सम्बर कालम में "2001" के स्थान पर "200/1" पढ़ें।

पृष्ठ संख्या 4509 पर गांव के नाम के कालम में लिखे "बरताना" के स्थान पर "बरसाणा" पढ़ें।

ऐसी भूमि में जिसका बाबत उपरोक्त संशोधन जारी किया है, हितबद्ध कोई व्यक्ति अधिसूचना के जारी किए जाने के इनकीस दिन के भीतर उक्त भूमि के सम्बूद्ध या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के व्यक्ति किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निवंधनों के प्रनुसार आधेप कर सकेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, खसरा सं. व शेकफल की बाबत उक्त अधिनियम की धारा (1) के निवंधनों के प्रनुसार इकलीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या: आर-31015/5/92-ओ.आर-1]

कुलदीप सिंह, अवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2191.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2687, dated the 13th October, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4509 to 4510, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4510, in column 1, for the word "Padaa" read "Padana".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]
KULDIP SINGH, Under Secy.

शिक्षित

नई नि. पा, 23 जुलाई, 1992

का. आ 2192—केन्द्र सरकार ने पेट्रोलिन और अधिनियम पाइया लाइन (भूमि में उपयोग के अधिकार का अवैन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपचारा (1) के अन्तर्गत जारी और भारत के राजपत्र भा. 2, खण्ड-3, उपचार (ii) पृष्ठ संख्या 4637 से 1639 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का था, 2791, दिनांक 27 अक्टूबर 90 द्वारा इस अधिसूचना से संलग्न अनुसूचा में वर्णित *माम वा माम-ग्राम करने के अपने आवश्यक सूचनाएँ थीं।

और केन्द्र सरकार की जालकारी में यह वाला नार्थ नई कि राज्य के प्रकाशित उपचारक अधिसूचना में यहां के दूसरे अधिसूचना

धारा 3 प्रदत्त अधिकारों का प्रयोग करने से हुए उपचार अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करना है।

पृष्ठ संख्या 4637 पर नानापुरा गांव के वांगानर कालम में पंक्ति 31 पर '53' के स्थान पर '50' पढ़ें।

पृष्ठ संख्या 4639 पर राजनगर गांव के आर कॉम्पनी में पांक्ति 16 पर '26' के स्थान पर '38' पढ़ें।

पृष्ठ संख्या 4638 पर सातुरा गांव के मर्वे नम्बर रॉलम में पंक्ति 45 पर '160' के स्थान पर '169/3' पढ़ें।

पृष्ठ संख्या 4638 पर सरकारपुरा गांव के आर कॉम्पनी में पंक्ति 2 पर '12' के स्थान पर '12' पढ़ें।

पृष्ठ संख्या 4638 पर गाथ के नाम के कॉम्पनी में 'नावांगोपाल' के स्थान पर 'नानीपाल' न।

पृष्ठ संख्या 4638 पर गार्वनपले गांव के मर्वे नम्बर कॉम्पनी में पंक्ति 31 पर '29' के स्थान पर '3' पढ़ें।

ऐसा भूमि में जितकी वादन उत्तराधि। संजोधन जारी किया गया हितवद्दु कोई व्यक्तित्व उस अधिसूचना के जाग किया जाने के अकाम हित के भीतर उक्त भूमि के अनुसूची में किया जाने के या नव, ऐसी भूमि में या इस पर किसी सरकार के ग्रामीण किए जाने के विचार उक्त अधिनियम की धारा 3 के उपचारा (1) के निम्नलिखितों के अनुसार आवश्यक संवेदन करेंगे।

स्पष्टीकरण—केवल इन अधिसूचना की धारा संजोधन गांव के नाम, वारारा सं. 3 के क्षेत्रफल के बाबत और अधिनियम की धारा 5(1) के निम्नलिखितों के अनुसार इसमें संदर्भ के उपचार का अधिकार जारी की जाने की वारंवार से प्राप्त होती है।

[मंत्री आ. 31015/5/92-वा. भा. II]

पृष्ठ संख्या 4783 पर "नावांगोपाल" गांव के मर्वे नं. कॉम्पनी में पंक्ति 39 पर "331" के स्थान पर "311" पढ़ें।

पृष्ठ संख्या 4783 पर खनीपुर गांव के आर और वर्गमीटर कॉम्पनी में "96" और "83" के स्थान पर "95" और "10" पढ़ें।

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4639, in line no. 35, in village 'Shinad' for survey no. "208" read "288".

at page 4639, in the schedule, in village Dharavadi, against survey no. 103, column 5, for "74" read "94", against survey no. 106, in column 5, for "90" read "10". In column 2, for survey no. "273" read "275", in village Nanapura, against survey no. 108, for "99" read "29".

at page 4640, in column 1, for the word "Manipipali" read "Nanipipali".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]
KULDIP SINGH, Under Secy.

शिक्षित

नई विल्सनी, 28 जुलाई, 1992

का. आ. 2193—केन्द्र सरकार ने पेट्रोलिन और अधिनियम पाइया लाइन (भूमि में उपयोग के अधिकार का अवैन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपचारा (1) के अधीन जारी और भारत के राजान भा. 2, खण्ड-3 उपचार (ii) पृष्ठ संख्या 4781 से 4784 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. 2846, दिनांक 10 नवम्बर, 90 द्वारा इस अधिनियम से संबंधित भूमि का अधिप्रहण करने के अपने आवश्यक सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह वाला नार्थ नई कि राज्य के प्रकाशित उपचारक अधिसूचना में मामण जा चुके रह गये हैं।

अत. अब केन्द्रीय सरकार उक्त अधिनियम का धारा 3 की उपचारा (1) धारा प्रदत्त अधिकारों का प्रयोग करने से उक्त अधिसूचना से संबंधित भूमि में नियन्त्रित साधन करता है।

पृष्ठ संख्या 4783 पर "नावांगोपाल" गांव के मर्वे नं. कॉम्पनी में पंक्ति 39 पर "331" के स्थान पर "311" पढ़ें।

पृष्ठ संख्या 4783 पर खनीपुर गांव के आर और वर्गमीटर कॉम्पनी में "96" और "83" के स्थान पर "95" और "10" पढ़ें।

पृष्ठ संख्या 4783 पर शोक्ता गांव के मर्वे नं. हैंगम में पंक्ति 27 पर "225" के स्थान पर "235" पढ़ें।

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2192.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2781, dated the 27th October, 1990, published in the Gazette of India, Part II Section 3, Sub-section (ii) 2020 GI/92-2

पृष्ठ संख्या 4784 पर आठवा गाव के भार कॉलम में पंक्ति 1 पर "99" के स्थान पर "09" पढ़ें।

पृष्ठ संख्या 4784 पर खानपूरा गाव के सर्वे नं. कॉलम में "337" के स्थान पर "397" पढ़ें।

ऐसी भूमि में जिसकी वावत उपरोक्त संशोधन जारी किया गया है हितवद्ध कोई अक्षिय हम अधिसूचना के जारी किए, आगे के इनकालिम दिन के भीतर उक्त भूमि के गम्भीर या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अंतिम जारी के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के नियधनों के अनुगाम आक्षेप रह सकता।

स्पष्टीकरण. केवल इस अधिसूचना के द्वारा संशोधन गवाव के नाम, अपरा स. ० व भेत्रफल की वावत उक्त अधिनियम की धारा 5 (1) के नियधनों के अनुगाम इकाई के विरुद्ध उक्त अधिनियम यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या अ.र-31015/5/92 ओ० आर 1]

कुलदीप सिंह, अवर निवार

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2193.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2846, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4784 to 4787, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby amends the Schedule appended to the specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing and other nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4784, before the existing schedule the following words shall be inserted, namely:—"Taluka: Patan, District: Banaskantha, State: Gujarat".

at page 4784, in village Varmaiya, in column 4, against survey no. 193, for '84' read '04', against survey no. 202, in column 4, for '10' read '18', in column 2, for survey no. '206' read '286', against survey no. 282, in column 5, for '4' read '44', in column 2, for survey no. '313' appearing after survey no. 316 read '315';

at page 4785, in column 1, the words "Valpurs (Contd.)" shall be omitted, against survey no. 360, in column 5, for '69' read '49', against survey no. 364, in column 4, for '81' read '01', against survey no. 417, in column 4, for '13' read '15', in column 2, for survey no. '925' read '927', against survey no. 888, in column 5, for '65' read '85', in village Aghar, in column 2, for survey no. '300' read '308', against survey no. 306, in column 5, for '50' read '58', in column 2, for survey no. '286' read '266', against survey no. 270, in column 5, for '65' read '56', in column 2, for survey no. '125/9' read '125/5' and for survey no. '260' read '368', against survey no. 1463, in column 4, for '33' read '35', against survey no. 547, in column 5, for '73' read '75', against survey no. 548, in column 5, for '88' read '38';

at page 4786, in village Khalinur, against survey no. 1 and 2, in column 4, for '96' read '82' in column 5, for '83' read '10', in village Odhava, against survey no. 230, in column 4, for '10' read '18', against

survey no. 257, in column 2, for '53' read '83', in column 2, for survey no. '261/9' read '251/9', for survey no. '216' read '316', for survey no. '168' read '160', against survey no. 149, in column 4, for '06' read '08', against survey no. 137, in column 5, for '08' read '05', against survey no. 299, in column 4, for '38' read '36'.

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 3 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 3 of the said Act shall start running from the date of issue of this notification.

[No. R-031015/5/92-O.R.I.]
KULDIP SINGH, Under Secy.

शिद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

का० आ० 2194.—केवल सरकार ने पैट्रोलियम और कॉलिम पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की "उपधारा (1) के अधीन जारी और भारत के ग्रामपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्या 4780 से 4792 में प्रकाशित भारत सरकार, पैट्रोलियम और प्राकृतिक गैस संदायलय की अधिसूचना का० आ० 2848, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना से संतान अनुसूची में वर्णित भूमि का अधिग्रहण करते के अपने आशय की सूचना दी थी।

और फैन्ड सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की तुला गलतियाँ हैं।

भत: यद्य केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती हैं।

पृष्ठ संख्या 4789 पर चित्रोङ गाव के हेक्टेयर कॉलम में पंक्ति 1 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर चित्रोङ गाव के हेक्टेयर कॉलम में पंक्ति 6 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर गाव के नाम के कॉलम में पंक्ति 8 पर "हेहरवा" के स्थान पर "हेहरवा" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के हेक्टेयर कॉलम में पंक्ति 16 पर "03" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के हेक्टेयर कॉलम में पंक्ति 19 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के एवर कॉलम में पंक्ति 21 पर "30" के स्थान पर "38" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के वर्गमीटर कॉलम में पंक्ति 24 पर "00" के स्थान पर "08" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के एवर कॉलम में पंक्ति 28 पर "03" के स्थान पर "08" पढ़ें।

पृष्ठ संख्या 4789 पर हेहरवा गाव के वर्गमीटर कॉलम में ५-३२ पर "62" के स्थान पर "02" पढ़ें।

पृष्ठ संख्या 4789 पर गाव के नाम के कॉलम में पंक्ति 43 वर सर्वेक्षण नम्बर 358/2 के सामने लिखे "तर्फ" को उसी कॉलम में पंक्ति 33 पर सर्वेक्षण नम्बर 437 के सामने पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के बर्गमीटर कॉलम में पंक्ति 41 पर "03" के स्थान पर "04" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर और बर्गमीटर कॉलम में पंक्ति 42 पर "53" और "7" के स्थान पर "03" और "78" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर कॉलम में पंक्ति 45 पर "14" के स्थान पर "19" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 46 पर "334/1" के स्थान पर "364/1" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर कॉलम में पंक्ति 53 पर "15" के स्थान पर "10" पढ़ें।

पृष्ठ संख्या 4790 पर गांव के नाम के कॉलम में पंक्ति 12 पर सर्वेक्षण नम्बर 569/2 के सामने लिखे "किंडियानगर" को उसी कॉलम में पंक्ति 11 पर सर्वेक्षण नम्बर "571" के सामने पढ़ें।

पृष्ठ संख्या 4790 पर किंडिया नगर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 45 पर "1228/1" के स्थान पर "1228/2" पढ़ें। उसी कॉलम में पंक्ति 46 पर "1228/2" के स्थान पर "1228/1" पढ़ें।

पृष्ठ संख्या 4790 पर भीमासर गांव के एयर कॉलम में पंक्ति 50 पर "876" के स्थान पर "87.5" पढ़ें।

पृष्ठ संख्या 4790 पर भीमासर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 27 पर "881/2" के स्थान पर "881/2" पढ़ें।

पृष्ठ संख्या 4790 पर भीमासर गांव के एयर कॉलम में पंक्ति 43 पर "20" के स्थान पर "28" पढ़ें।

पृष्ठ संख्या 4791 पर भीमासर गांव के शर्वेक्षण नम्बर कॉलम में पंक्ति 47 पर "2085/5" के स्थान पर "2080/5" पढ़ें।

पृष्ठ संख्या 4791 पर भीमासर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 32 पर "28/2" के स्थान पर "26/2" पढ़ें।

पृष्ठ संख्या 4791 पर भीमासर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 54 पर "88/2" के स्थान पर "88/2" पढ़ें।

पृष्ठ संख्या 4792 पर भीमासर गांव के बर्गमीटर में पंक्ति 2 पर "55" के स्थान पर "56" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन आरी किया गया है, हितवद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के प्रतित किए जाने के विरुद्ध उक्त अधिनियम की धारा 3 की उपधारा (1) के निवधनों के अनुसार आपेक्षकर सकेगा।

स्वाक्षरण:—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, ज़िलहास की बाबत उक्त अधिनियम की धारा 3(1) के निवधनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना आरी की जाने की तारीख से प्रारम्भ होगी।

[संख्या: भार 31015/5/92-ओ० आर-I]

कुलदीप सिंह, अवार सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2194.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas no. S.O. 2848, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4792 to 4794, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of

Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4794, in village Lakhagadh, in column 2, in line 47, for survey no. "61/4" read "61/3" and in line 49, for survey no. "61/3" read "61/4".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty-one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.
भारतीय सचिव

नई दिल्ली, 28 जुलाई, 1992

का. प्रा. 2195.—केन्द्र सरकार ने पेट्रोलियम और अन्यिंश्चालन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपरोक्त (ii) पृष्ठ संख्यांक 4794 से 4797 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. प्रा. 2849, दिनांक 10 नवम्बर, 90 द्वारा हम अधिसूचना से संलग्न अनुसूची में विभिन्न भूमि का अधिशृणु करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जासकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मरण की तुष्ट गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रवत्त अविनियोग का प्रयोग करते हुए उक्त अधिसूचना से सलग अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4794 पर गांव के नाम के कॉलम में "पोपराला" के स्थान पर "पीपराला" पढ़ें। पृष्ठ संख्या 4795 पर गांव के नाम के कॉलम में पंक्ति 14 पर "रोजु गंगांडो" के स्थान पर "राजु" पढ़ें।

पृष्ठ संख्या 4795 पर गांव के नाम के कॉलम में पंक्ति 23 के सर्वे नं. 839 के सामने " " पर "पर" पढ़ें।

पृष्ठ संख्या 4796 पर गांव के नाम के कॉलम में पंक्ति 15 के सर्वे नं. 168 के सामने " " के स्थान पर "देगामडा" पढ़ें।

पृष्ठ संख्या 4796 पर गांव के नाम के कॉलम में पंक्ति 1 के सर्वे नं. 148 के सामने "परम्पुर्व" के स्थान पर "देगामडा" पढ़ें।

पृष्ठ संख्या 4797 पर वाराही गांव के सर्वे नं. के कॉलम में पंक्ति 3 पर "12" के स्थान पर "312" पढ़ें।

पृष्ठ संख्या 4797 पर वाराही गांव के आरं कॉलम में पंक्ति 4 पर "1" के स्थान पर "19" पढ़ें।

पृष्ठ संख्या 4797 पर वाराही गांव के अर्मीटर कॉलम में पंक्ति 18 पर "4" के स्थान पर "45" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, हिन्दूद्वारा कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इकलीय विन के भीतर उक्त भूमि के सम्बूद्ध या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अंजित किए जाने के विन्दु उक्त अधिनियम की धारा 5 की उपधारा (1) के निवंशनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण.—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, संख्या सं. व लेखफल की बाबत उक्त अधिनियम की धारा 5(1) के निवंशनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/5/92-ओ.आर.-I]

कुलदीप सिंह, प्रबन्ध सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2195.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2849, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4797 to 4799, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4798, in column 1, for the name of village "antalpur" read "Santalpur", in village Santalpur, in column 2, for survey no. "682" read "782", and for "689" read "789";

at page 4799, in village Lakhapura, against survey no. 147, in column 3, for '00' read '01' against survey no. 412, in village Varahi, in column 3, for '05' read '00'.

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area mentioned through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-OR-I]
KULDIP SINGH, Under Secy.

सुदिप सिंह

नई दिल्ली, 28 जुलाई, 1992

S.O. 2196.—केवल सरकार ने वैद्वालियम और अनिज फाइलाइन (भूमि में उपयोग के अधिकार का वर्णन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजनवी भाग-2, खण्ड-3, उपखण्ड (iii) पृष्ठ संख्या-4799 से 4800 तक वैद्वालियम और प्राकृतिक रैम मंडालय की

अधिसूचना का आ. 2850, दिनांक 10 नवम्बर, 90 द्वारा इस अविस्तरण में संतरन अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केवल सरकार की जामकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियां हैं।

यथा, यह केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से सलग अनुसूची में निम्नलिखित संशोधन करती है —

पृष्ठ संख्या 4799 पर गांव के नाम के कॉलम में "टुनावाडा" के स्थान पर "तुनावाडा" पढ़ें।

पृष्ठ संख्या 4800 पर तुनावाडा गांव के बर्गमीटर कॉलम में पक्षि 20 पर "07" के स्थान पर "67" पढ़ें।

पृष्ठ संख्या 4800 पर मामा गांव के सर्वे नं. कॉलम में पक्षि 43 पर "272" के स्थान पर "2/2" पढ़ें।

पृष्ठ संख्या 4800 पर रोडा गांव के सर्वे नं. कॉलम में पक्षि 34 पर "442" के स्थान पर "412" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है हिन्दूद्वारा कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इकलीस विन के भीतर उक्त भूमि के सम्बूद्ध या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अंजित किए जाने के विन्दु उक्त अधिनियम की धारा 5 की उपधारा (1) के निवंशनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण.—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, संख्या सं. व लेखफल की बाबत उक्त अधिनियम की धारा 5(1) के निवंशनों के अनुसार इक्कीस दिन भी उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/5/92-ओ.आर.-I]

कुलदीप सिंह, प्रबन्ध सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2195.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2850, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4800 to 4801, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4801, in the schedule for "Harija" read "Harji"; in village Dunavada, against survey no. 112 in column 3, for "?" read "0", in village Masa, against survey no. 120, in column 4, for "26" read "36", in line 22, for survey no. '3' read '33'; for survey no. "769" read "759".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in

or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धि पत्र

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2197.—केन्द्रीय सरकार ने पेट्रोलियम और ग्रनिज पाइपलाइन (भूमि में उपयोग के अधिकार का प्राप्ति) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग 2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्याक 4802 से 4803 तक प्रकाशित भारत सरकार, पेट्रोलियम और ग्राहनिक गैस मंत्रालय की अधिसूचना का.आ. 2851, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना से सन्तान अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने प्राप्ति की सूचना थी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रकाशित गतियों का प्रयोग करने द्वारा उक्त अधिसूचना गेर्मन अनुसूची में निम्नलिखित संशोधन करती है —

पृष्ठ संख्या 4803 पर वेस्टी गांव के ईकट्टेयर कानून नं. पंक्ति 2 पर "06" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4803 पर इंश्लो गांव के सर्वे नं. कॉलम में पंक्ति 24 पर "543/9" के स्थान पर "543/3/9" पढ़ें।

पृष्ठ संख्या 4803 पर वेस्टी गांव के सर्वे नं. कॉलम में पंक्ति 28 पर "543/10" के स्थान पर "543/3/10" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के वर्ग मी. कॉलम में पंक्ति 35 पर "90" के स्थान पर "98" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के वर्ग मी. कॉलम में पंक्ति 38 पर "5" के स्थान पर "55" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के वर्ग मी. कॉलम में पंक्ति 39 पर "5" के स्थान पर "50" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के वर्ग मी. कॉलम में पंक्ति 40 पर "6" के स्थान पर "64" पढ़ें।

पृष्ठ संख्या 4803 पर गांव के नाम के कानून में पंक्ति 1 पर "हांसोध (जारी)" के स्थान पर "हीमार (जारी)" पढ़ें।

ऐसी भूमि में जिनके बावजूद उपरोक्त संशोधन जारी किया गया है, हितवहन कोई व्यक्ति इस अधिसूचना के जारी नाम के ईकाई दिन के भीतर उक्त भूमि के मध्यूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अधिनि किए जाने के विरह उक्त अधिनियम की धारा 5 की आधारा (1) के निवधनों के अनुसार अधेष्य कर सकेगा।

स्पष्टीकरण.—केन्द्र इस अधिसूचना के द्वारा संशोधित गांव के नाम वस्त्र में व शैक्षण की बाबत उक्त अधिनियम की धारा 5(1) के

निवधनों के अनुसार इकाई दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[मर्या आर-31015/5/92-आ.आर-1]

कृतीप्रसिद्ध अव्र तचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2197.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2851, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub section (ii) at pages 4803 to 4805, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification of the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4804, in village Dethah, against survey no. 498, in column 4, for "15" read "13".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धि पत्र

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2198.—केन्द्रीय सरकार ने पेट्रोलियम और ग्रनिज पाइपलाइन (भूमि में उपयोग के अधिकार का प्राप्ति) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग 2, खण्ड 3, उपखण्ड (ii) पृष्ठ संख्याक 8 से 9 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 33, दिनांक 4 जनवरी, 1992 द्वारा इस अधिसूचना में सन्तान अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने प्राप्ति की सूचना थी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रकाशित गतियों का प्रयोग करने द्वारा उक्त अधिसूचना में सन्तान अनुसूची में निम्नलिखित संशोधन करती हैं।

पृष्ठ संख्या 8 के पंक्ति 1 से 10 तक वाले अन्यान्य नाम के स्थान पर "प्रयोग अनुसन्धान" पढ़ें।

पृष्ठ संख्या 8 सर्वेक्षण संख्या 1265 के आगे हेक्टर कौलम में '08' के स्थान पर '00' पढ़े।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, हिन्दू लोह की अधिकतम अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के प्राप्ति किए जाने के विशेष उक्त अधिनियम की धारा 5 की उपधारा (1) के निवंधनों के प्रनुसार आलेह कर रहेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा संशोधित गाव के नाम, खासगार में, व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निवंधनों के प्रनुसार इक्कीस दिन की उक्त अधिकृत यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/7/92-ओ. आर.-1]

कुलदीप सिंह, प्रबन्ध सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O.2198.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 33, dated the 4th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at page 10, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Official Gazette.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 10, in paragraph 3, for the words, brackets and figures "Act (50 of 1962)" read "Act, 1962 (50 of 1962)".

[No. R-31015/7/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2199.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाल-साइन (भूमि में उपयोग के अधिकार का प्रबन्ध) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के प्रयोग जारी और भारत के राजपत्र भाग 2, छाण्ड 3, उपग्रहण (ii) पृष्ठ संख्यांक 247 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का का.पा. 137, विनांक 11 जनवरी, 1992 द्वारा उस अधिसूचना से सलग प्रनुसारी में वर्णित भूमि का अधिग्रहण करने के अपने भागों की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात नाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में भूमि की कुछ गलतियां हैं।

अब अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त घोषणा का प्रयोग करने से दूर त्रिपुणियना से मंत्रालय में निम्नलिखित संशोधन कर दी गई।

पृष्ठ संख्या 247 के वाहिने भाग में कालम (1) में 'पंडाला (क्रमांक स्थान पर 'पंडाणा (क्रमांक) पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, हिन्दू लोह की अधिकतम अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के प्राप्ति किए जाने के विशेष उक्त अधिनियम की धारा 6 की उपधारा (1) के निवंधनों के प्रनुसार आलेह कर सकेगा।

हास्तीकरण :—केवल इस अधिसूचना के द्वारा संशोधित नाम के नाम, खासगार में, व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निवंधनों के प्रनुसार इक्कीस दिन की उक्त अधिकृत यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होती।

[संख्या आर-31015/7/92-ओ. प्रार.-1]

कुलदीप सिंह, अधिकारी सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2199.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 137, dated the 11th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii), at page 247 to 248, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act,) the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification ;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Official Gazette ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 247, in the schedule, in Column 1, for "Mithi Mohar" read "Mithi Rohar".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 3 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 3 of the said Act starts running from the date the copies of this notification are made available to the public after its publication in the official Gazette.

[No. R-31015/7/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2200.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाल-साइन (भूमि में उपयोग के अधिकार का प्रबन्ध), अधिनियम 1962' (1962 का 50) की धारा 3 की उपधारा (1) के प्रयोग जारी की और भारत के राजपत्र भाग 2, छाण्ड 3, उपग्रहण (ii) पृष्ठ संख्यांक 3508 से 3510 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का का.पा. 2303 विनांक 28 भाग स, 1991 द्वारा इस अधिसूचना से सलग अन्तर्भूमि में वर्णित भूमि का अधिग्रहण करने के भाग द्वारा दी गई।

— और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

प्रत: यद्य केन्द्रीय सरकार उपर प्राधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त प्रक्रियों का प्रयोग करते हुए उक्त अधिसूचना में संलग्न अनुसूची में निम्नलिखित संशोधन करायी हैं।

पृष्ठ संख्या 3508 पर नक्षीकार के नाम के कालम में लिखे “मां गाननी” के स्थान पर “सांगानने” पढ़ें।

पृष्ठ संख्या 3510 पर रासी भूमि गाँव के लक्ष्मरा में कालम में “1030” के स्थान पर “1040” पढ़ें।

ऐसी भूमि में जिमकी बाबत उपर्युक्त संशोधन जानी किया गया है, उक्तबद्ध कोई अवित्त इस अधिसूचना के जारी किए जाने के इककीम दिन के भीतर के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के प्रतिक्रिया जाने के बिलकुल उक्त अधिनियम की धारा 3 की उपधारा (1) के निम्नान्तों के अनुसार प्राप्त कर सकेगा।

स्पष्टीकरण:—केन्द्र इस अधिसूचना के द्वारा संशोधित गाँव के नाम, लक्ष्मरा वा व भेलफल की बाबत उक्त अधिनियम की धारा 3(1) के निम्नान्तों के अनुसार इककीस दिन की उक्त अवधि इस अधिसूचना के जारी किये जाने की तात्पर्य से प्रारम्भ होगी।

[मेरा आर-31015/3/91-प्र, यार आई (भाग-1)]

कुलदीप निह, अवर अधिकारी

शुद्धिपत्र

नई विली, 28 जुलाई, 1992

का.आ. 2201:—केन्द्र सरकार ने पेट्रोलियम और गाँव पर 1947-वाइट (भूमि में उपयोग के अधिकार का प्राप्ति) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और गाँव के राजपत्र साप्त-2, अप्प-3, उपर्युक्त (ii) पृष्ठ संख्या 4787 से 4788 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 2847, दिनांक: 10 नवम्बर, 90 द्वारा इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिप्राप्त करने के लिये आवश्यक की तैयारी दी गी।

यद्य केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजनव में प्रकाशित उत्तरीकृत अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

प्रत: यद्य केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4787 पर तालुका: कंकराज के नाम से लिखे “राज्य, बनसका-ताप” के स्थान पर “जिला: बनसका-ठाठा” पढ़ें।

पृष्ठ संख्या 4787 पर तालुका के नाम से लिखे “कंकराज” के स्थान पर “कांकरेज” पढ़ें।

पृष्ठ संख्या 4787 पर गाँव के नाम के कौलम में पंचित 1 पर “मोदन-परा” के स्थान पर “सीहनपुरा” पढ़ें।

पृष्ठ संख्या 4788 पर गाँवों गाँव के बांगमीठर कौलम में पंचित 7 पर “85” के स्थान पर “84” पढ़ें।

ऐसी भूमि में जिसकी बाबत उत्तरीकृत संशोधन जारी किया गया है, हिन्दू बाई अद्वित इस अधिसूचना के जारी किए जाने के इककीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के प्रतिक्रिया किए जाने के बिलकुल उक्त

अधिनियम का ग्राहा 3 का उपधारा (1) ने निवासनी वैद्यनाम अधिकार कर सकेगा।

स्पष्टीकरण:—ऐसे हम अधिसूचना के द्वारा संशोधित गाँव के नाम, खण्डण संख्या व भेलफल को बाबत उक्त अधिनियम की धारा 5 (1) के नियमों के अनुसार इक्कीस दिन को उक्त अवधि यह अधिसूचना जारी की जाने को सारीश में प्रारम्भ होगी।

[मस्ता आर-31015//792-यो यार-आई]

कुलदीप निह, अवर अधिकारी

श्रम मंत्रालय

नई विली, 17 जुलाई 1992

का.आ. 2202:—प्रोद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक और बीकानेर एवं जयपुर के प्रबन्धनताव के मंबद्ध नियोजकों और उनके कमंडकारी के बीच, अनुबंध में निवाट प्रोद्योगिक विवाद में प्रोद्योगिक अधिकारण, जयपुर के विवरण को प्रकाशित करनी है, जो केन्द्रीय सरकार की 16-7-92 की प्राप्त हुमा था।

[संख्या एम-12012/135/86-डी-II (ए)]

मुख्य चतुर शर्मा, ईस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th July, 1992

S.O. 2202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 16-7-92.

[No. L-12012/135/86 D.J.I(A)]

S. C. SHARMA, Desk Officer

अनुकूलन

केन्द्रीय प्रोद्योगिक व्यावधिकारण, जयपुर

केस नं. सी.आई.टी. 9/87

रिकार्ड: भारत सरकार, अम मंत्रालय, नई विली का आदेश नमूक एल. 12012/135/86-डी-II (ए) दिनांक 19-1-1987 श्री हाकिम धरो मार्क्स राजस्थान बैंक ईमानाई यन्त्रियन परवाना धरो धरो वाग, जोधपुर।

—प्रार्थी

बनाम

स्टेट बैंक बौकानेर एवं जयपुर, हैदर अंगिला, फिलक शाह, जयपुर।

—प्रप्रार्थी

उपस्थित

भाननदीय व्यावधारीश श्री जगतसिंह जी, आर.एव जे.एम

प्रार्थी की ओर से:

श्री जयस्ती शाल शाह

प्रप्रार्थी की ओर से:

श्री एस.के. जैन

दिनांक प्रकाश:

4 जून, 1992

अदावत

भारत सरकार, अम मान्यता, नई दिल्ली न तिन विवाद हम अधिकारियों के तरफे अधिकारियों अधिकारियों विवाद अधिकारियों 1947 की धारा 10 (1) (प) वे अनुमति प्रेरणा है।

“क्षमा एट बैंक ऑफ बोडीलंड एंड जयपुर के प्रबन्धतत्र वाग कनेंटर्स एंड एंड एंड हाकिम अली की सेवाएँ 12-1-81 में समाप्त करने का अनुरोध त्यावाचन है। यह नहीं तो यह कर्मकार के अनुतोष का हक्का है।”

२ नावन्यान बैंक एम्प्लाई यूनियन, माध्या बाल, जोधपुर, जिसे तत्पश्चात प्रार्थी गंग संवादित किया है, ने अप्रैये बैंकम प्रकाट किया कि अधिकारी बैंक भी रावतर शास्त्रा में काफिम अन, श्रामक को निवृत्ति 9-11-78 को कलैशन एंड एंट के लाए में के थों जिस बाबत हाकिम अली तथा नावन्यान धारा के प्रबन्धक के बोन प्रदान एंड्रेट हुआ था। उक्त प्रभाग के अनुसार अधिकारी अली ने 1,000/- रुपये अनुरोधियों रिटर्निंग बैंक में जमा कराई थी और यह घर जाकर आहको से लाया इन्टिड़ करके बैंक में रुपये जमा कराता था जिस बाबत उक्त उसे कमीशन के सामें करेक्क 900/- रुपये प्राप्त माह देता था। संघ का यह भी कहना है कि एंड्रेट प्रदर्श-1 के पनुगार हाकिम अली बैंक के कम्पलोट डिग्गियिन में रहा था और तियांत को दिनांके से 11 मार्च 1980 तक यह बैंक में जाकर लैजैन में भी उन एंड्रेयों का इन्डिया बाला था जो वह आहको से इन्टिड़ करके लाना था। उक्त 12-3-80 की बैंक ने प्रदर्श-2 पत्र शिक्षक उत्तरों के बाबत कार्य कराना बतव कर दिया और तत्पश्चात 12 जूनवरी, 1981 का प्रदर्श-3 पत्र द्वारा शास्त्रों के लये जाते खांखना भी बंद करवा दिया। प्रार्थी संघ कहता है कि इस गर हाकिम अली ने एक पत्र दिनाक 23-6-80 को प्रदर्श-4 प्रबन्धक रावतर शास्त्रा को लिया कि 2-7-81 में सभी खाने खद्द दो जायेंगे और वह उग रास्ता में विवित हो जायेगा जो उसे बार्नर कमीशन मिलती थी। इस पत्र 24-6-81 का प्रबन्धक रावतर शास्त्रा ने प्रदर्श-4 पत्र मुख्यालय को पठा दिया। 30-7-81 की हाकिम अली ने पुन प्रबन्धक रावतर का प्रदर्श-5 पत्र लिया किर भी 12-1-81 की हाकिम अली की सेवाएँ समाप्त कर दी गई। प्रार्थी गप या कदम है कि 12-1-81 की समाप्त हुए एक कलैशर वर्ष में हाकिम अली ने 210 दिव्य की सेवा पूरी कर दी थी किर भी धारा 25-एफ के प्रावधानों का लाय उसे नहीं दिया गया अर्थात् न तो एक माह का नंदिम दिया न ही नोटिस के एवज में एक माह का बेसन यहां तक कि छंटनी भत्ता भी नहीं दिया गया। प्रार्थी संघ के अमुमार हाकिम अली को 12-1-81 से शा मुक्ति धारा 25-एफ के प्रावधानों के विवित हीने में रहा ही अनुचित, अवैध एवं अनु नहीं जाते हैं इन्हियं हाकिम अली का बेसा में मात्र हुए 12-1-81 से उक्त बेसा को निरन्तरा कार्य रखते हुए उसे सम्म जास दियाये जाये।

३ अधिकारी बैंक ने जरिये प्रायुतर प्रायमिक आपासेया को ५ कि हाकिम अली डिग्गिट कलैशर या और कमीशन एंडेन्ट के रुप में नियुक्त था। उक्त का कार्य साहको के भव-भव जाकर उनसे बचत खाने खुलवाना था और शास्त्रों का बचत इन्टिड़ करके उनको पास बुक में अंकित करना तथा बैंक में जमा करना था और उक्त कमीशन मिलता था और इन प्रकार हाकिम अली और बैंक के बोन नीकर व मालिक के मंदिर नहीं थे और तो और और अधिकारियों का विवाद अधिकारियों का धारा 2 (एस) के प्रदर्श-1 हाकिम अली कर्मकार की अभियान से आया है। इसलिए यह निर्णय ही विधि विवाद होने से आपास करते हैं। तियोंजक के अनुसार बैंक द्वारा उनी डिग्गिट स्कॉम जरूर में बचत को आवृत डानने के दृष्टि से बाल का रह था। उक्त एंड्रेट को पुन देत ही अधिकारियों के बाल का रह था और यों जिसके प्रत्येक हाकिम अली को प्रिविट-कम्प-कैरेंजेन दिवर्जन्टिव नियूक्स दिया गया था और कवबन्धन प्रिविट प्रदर्श-1 पक्षकारों में हुआ जिसके अनुगार ही हाकिम अली ने 1,000/- रुपये भिस्योरिटी बैंक में जमा

कराई। अप्रसाध निधि थकाउट खुलवाने हेतु हाकिम अली घर-घर जाता था और आहको को समझा बुझा कर उक्त थकाउट खुलवाना था और आहको की बचत की राशि उनी रिन बैंक में जमा कराता था। नियोजक का यह भी कहना है कि एंड्रेट प्रदर्श-1 के अनुसार हाकिम अली जिस दिन आहकों से बचत की राशि इन्टिड़ करता था, उसी दिन बैंक में जमा नहीं रहता था बल्कि कुछ दिन बाद जमा कराता था। आहको से रोजाना भी बचत के बैंसे इक्टूट नहीं करता था और इस प्रकार अपना कार्य मुख्यरूप से प्रदर्श-1 के मुताबिक नहीं करता था। अधिकारी का यह भी कहना है कि हाकिम अली बैंक के कम्पलीट मुख्यरूपियत में नहीं था, उसके काम फरने के नियंत्रण घटे नहीं थे न ही इस काम के लिए कोई न्यूनतम वैधिक योग्यता निर्धारित थी यहां तक कि आयु व स्वास्थ्य परीक्षा का भी कोई मापदण्ड निर्धारित नहीं था। उसके कार्य पर बैंक का किसी प्रकार का कोई नियंत्रण नहीं था। बैंक की शास्त्रा में बैठकर ही उसे काम करना नहीं पड़ता था न ही उसकी हाजिरी लगती थी और न ही उसे किसी प्रकार का नियंत्रण बेतन मिलता था। नियोजक स्वीकार करते हैं कि शास्त्रा प्रबन्धक ने उसे कहा था कि बैंक की किसायों या देजर्स में कार्य करने का उसे कोई अधिकार नहीं है। यह भी कहते हैं कि बैंक द्वारा हाकिम अली की सेवा समाप्ति का प्रश्न ही नहीं उठाया ज्योंकि वह बैंक का कर्मकार ही नहीं था। और और अधिक विवाद अधिकारियम 1947 के प्रावधान लागू नहीं हुते। इसलिए धारा 25-एफ की पालन करने का प्रश्न ही नहीं उठाया और हाकिम अली किसी अनुतोष का अधिकारी नहीं है।

४ अपने कथन के समर्थन में हाकिम अली ने स्वयं का अपय पत्र पेश कर सत्यापित कराया जिससे अधिकारी के प्रतिनिधि ने जिरह की। प्रानेखियः साक्ष्य में प्रदर्श-1 लगभग 5 कोटी प्रतियों पेश की है। इसके विपर्यात नियोजक की तरफ से श्री आर. डी. बुप्पन ने अपय पत्र पेश किया है तिससे संघ के प्रतिनिधि ने जिरह की है। प्रलेखक साध्य में प्रदेश एम-1 साधाय एम-7 कोटी प्रतियों पेश हुई है। तत्पश्चात् मैत्रे पत्रावानी का निरक्षण दिया और पत्र कार्यों के प्रतिनिधियों को विस्तारपूर्वक मुता।

५ पक्षकारों में एक माल विवाद यही है कि हाशिम अली तथा विष्टी दैक के बोन मालिक व नीकर के संबंध हैं या नहीं और क्या हाकिम अली और अधिकारियों के विवाद अधिकारियम 1947 की धारा 2 (एस) के अन्तर्गत कर्मकार की प्रिवासा में आता है। अपने अपय पत्र में हाकिम अली कहता है उसकी नियुक्ति बैंक की रावतर शास्त्रा में 9-11-78 को कलैशन एंड एट के पद पर हुई थी। उन्होंने विष्टी बैंक में 1,000/- रुपये भिस्योरिटी के जमा कराये थे। उनका कार्य साध्य में बोन प्रदेश रहा है। हाकिम अली कहता है उसका मूल्य कार्य बैंक में जमा राशि में घृद्धि करने के तरह से संघों से अर-घर जाकर बैंक में अपना कर्माने को प्रतिसाहित करता व उनकी बचत व अप्य खाते खोपते हेतु आपस्थक कार्यवाही विष्टी बैंक के अधिकारियों को देखते हैं में व उनके मार्ग-दर्शन में पूरी करने का था। उसके द्वारा खुलवाये गये खातों के आहकों से माहारी अधिकारी अन्यथा समय समय पर एकम प्राप्त कर उसे रोजाना बैंक में उनके खातों में अमा कराया था हाकिम अली कहता है यह उनके द्वारा खोपते हुए खातों के आहकों के बाह्याने के बाह्याने के बाह्याने में नथा विष्टी बैंक की खाता व रांकड़ बही में एकम जमा कराया था व अप्य बैनरेकल कार्य करना था और विष्टी बैंक उनके द्वारा खुलवाये गये खातों में जमा कर्म रही रकम पर कमिशन के रूप में बेतन भुगतान करता था, इस पर उने लगभग 900 रुपये प्रति माह बेतन के रूप में मिलता था। हाकिम अली कहता है उसके विष्टी बैंक ने मेवा शर्तों का परपत्र लिखवाया था और उसके अन्तर्गत कार्य करना था और विष्टी बैंक उनके द्वारा खुलवाये गये खातों में जमा कर्म रही रकम पर कमिशन के रूप में बेतन भुगतान करता था, इस पर उने लगभग 900 रुपये प्रति माह बेतन के रूप में मिलता था। हाकिम अली कहता है वह जिस लाभों के लाभे बैंक में खुलवाया था वे मुझे बैंक जा कर बासी मानता ही मुझे खातों में जमा करने हेतु रकम देते थे बैंक जाने खुलवाते थे। हाकिम अली यह भी कहता है कि उसे 12-3-80 की प्रदर्श-2 उक्त 2 (एस) के बैंक में बैनरेकल कार्य नहीं था।

है उरे बैक में फिरो हायिरो रजिस्टर में हस्ताक्षर नहीं करने होता थे। उन्हने जब कभी काम बैक लिया तो बैक को पूछा किया था। इन विषय का एक पल डॉल्यू-४ है जहां पा कहा है कि यह नव्यवध का था तो के नव्यवध तार रथेक विन बद्रुन हिन्दे हुए रैमे वह अगले विन बैक से जहा कहा था प्रधार्यी प्रतिविधि के इस सुनाम को अधिक ने प्रधार्याकार किया कि "ये नहीं था कि जब यह मेरा तवियू-१ था मैंने कलैकरण का फार्म किया और जब इच्छा नहीं हुई तो इसका ही पृष्ठ कार्य करना छोड़ दिया।" हायिम भली से विस्तार पूर्वक प्रति परोक्षा की गई है और उसने प्रति परोक्षा में पूछे गये प्रथेत प्रयत्न का उत्तर सीधा व समाधानकारी किया है। किसी भी प्रयत्न के उत्तर को टालने का प्रयास नहीं किया है और यह प्रति परोक्षा की कस्टोटी पर छारा उत्तरा है। हायिम भली ने क्लेम के भ्रमामार ही प्रपते शायद पल में भी दर्ज किया है कि नियुक्ति लिपि से 11-3-80 तक उसने लगातार विषयकी बैक में बैठकर उसके लेजर्स में जह प्राहृकों की बचत खाता पुस्तकों में उस राशि का हृदाज किया है जो वह घर-घर जाकर प्राहृकों से वसूल करके लाता था। 12-3-80 को डॉल्यू-2 पल द्वारा बैक से उक्त कार्य करने से मना किया है परंतु किर भी न तो क्लेम के प्रथेतर में उक्त तथ्य का प्रधार्यी हारा समाधान किया गया और न ही हायिम भली से इस विषय में विशेष प्रति परोक्षा की गई। पहला तक कि बैक के साथी भी दुग्गल ने भी प्रपते शायद पल में यह दर्ज नहीं किया कि 11-3-80 तक हायिम भली से बैक ने बचत खाता पुस्तकों में या लेजर में कोई हृदाज नहीं करवाया ही। भी दुग्गल प्रपते शायद पल की चरण सं. ८ में 12-3-80 का पल जारी करना स्वीकार करते हैं और कहते हैं कि इनके द्वारा साथा प्रधार्यक रावतमर से हायिम अपनी की सूचित किया था कि यह बैक भी किताबों द खातों में कोई कार्य नहीं करे जिससे यही निष्कर्ष दिया जाए है कि 12-3-80 तक हायिम भली बैक की रावतमर साथा से 11-3-80 को कैत दुग्गल व लैंगर्स में उस राशि का हृदाज करता था जो वह घर-घर जाकर कलैकरण कर लाता था।

6. प्रभारी बैंक को लरक से शो मार दी. दुग्गल को शपथ पत्र पेश हिरा गया है जो यह स्वीकार करते हैं कि उसने कभी भी रावतसर पाला में काम नहीं किया और उसे व्यक्तिगत जानकारी नहीं है जो वहाँ दिया है। प्रभारी को शो में श्री दुग्गल स्वीकार करता है कि वारा लुवारा लथा डिपोजित लाना भी बैंक का ही काम है, प्राम पॉसिल से पैसे जमा करना भी बैंक का ही त्रिजनेम है। शुरू ही प्रभारी डाईटो डिपोजित कल्पकर का काम करता था, उसने जाते लुनारे थे, वह पासबूक में कल्पमर के मामले द्वारा करके लाना पा जिस पर बैंक के अधिकारी वस्त्रालूप करते थे। बैंक में या 10.00 एम. से 2.00 पी एम. तक जमा करा सकता था। श्री दुग्गल प्रति परोक्षा में हारीगार करता है कि शार हारिम प्रभारी किसी कल्पमर से पैसे नहीं लाता और पाप दुक में भी हंद्राराज कर लाता और पैसे बैंक में जमा नहीं करता तो बैंक उसके विपक्ष कार्यवाही कर देता था। बैंक के साक्षी की उपरोक्त स्वीकारेक्षण से यही निष्कर्ष प्रिकला है कि शारे बैंक में बैंकर अधिक काम नहीं करता हो, वाहे हारी राजस्टर में उसकी हाजिरी नहीं लगती हो तथा वाहे उसे होई निवेदन बैंक नहीं प्रिकला हो परंतु अधिकरेक्षण पर उपलब्ध साक्षण से यह निष्कर्ष प्रिकलता है कि हारिम प्रभारी बैंक के निवेदन में वा और बैंक का ही कार्य करता था इसलिए वह बैंक का कर्मचारी था।

7. वैक की तरफ से प्रभासर्व “ए” प्रभासर्व “वी” प्रस्तुत हुए हैं। प्रभासर्व ए में कमेश्वर ए वैंट की इमुटीज इंज और प्रभासर्व वी में उसका रैमरेजन तथा पैनल्टी। इन वार्मों प्रोलेक्टो से भी भी भेरी उपरोक्त धारणा की ही पुष्टि होती है कि हाइकिम धारों पूरी रूपेण वैक के नियकण में कार्य करता था और वैक की हित्यातों के प्रमुखार ही उसे कार्य प्रभासर्व वी तथा चूक होने पर बंद स्थिर उसका कमीश्वर काटा जा सकता था।

8. श्री जैन, बैंक प्रतिनिधि में कुछ श्याय दृष्टियों का भी उल्लेख किया है। भाराबैर कॉम्पनी ब्राह्म वर्क्सम 1962 (11) एल. एस. जै. 2020 GI/92-3

(एन. सी.) 356 पर उत्तराधि उच्चतम न्यायालय के द्वाया दृष्टांत का उत्तराधि किया है जिसमे खान में कार्य करने हेतु अभियान का नियुक्ति सिरदार किया करते थे जिनका सुपरिवोजन भी आवास पर रहता था और जितना कार्य सिरदारों द्वारा नियुक्त मजबूर सरदार को बोकसी में करते थे उसके अनुसार ही सिरदारों द्वारा काम के लिए कर्मान नियुक्त था। उन्हें विवाद के विषय तथा आवास परिवर्त्तियों के संदर्भ में तथ्यात्मक निष्कर्ष यह निकला था कि न्यायालय नानी प्रबधकों का निर्दारों द्वारा नियुक्त व्यक्ति या पर कोई निरन्तर व्यक्ति नहीं है और उस विवेग परिवर्त्तियों में सिरदारों द्वारा नियुक्त व्यक्ति धारा 2 (एस) के अंतर्गत कर्मानार की परिमाण में नहीं पाये जाय। श्री जैन का तरफ से मे एड बेकर इंडिया लि. बनाम वर्कमेन 1961 (2) एस. एल. जे. 94 के उच्चतम न्यायालय के द्वाया दृष्टांत भी उत्तराधि किया गया है जिसके भी तथ्य विवेचनाधीन विवाद तथ्यों से एकदम भिन्न थे। मानीय उच्चतम न्यायालय ने निम्न मत व्यक्त किया:

उपरोक्त विवाद में गेड़ याल रिपोर्टिंग का महत्व क्या था क्वोटिंग करने का था, यहाँ बहुत कम्पनी कम वर्ग में बहल नहीं जा सकते थे को कम्पनी-विवाद का इस डैटल था और इन दिनों मैं कल रिपोर्टिंग का कमेंटार रहा हूँ मात्र।

9. श्री जीत दाग किन्हींकर आदल हैन्दा वनाम हड्डपन। लक्षण
बिवाबे 1963 (1) पम. एवं जे 120 ए उत्तम उत्तम
न्यायालय के न्याय दृष्टान्त का भी भाग लिया गया है जिसके भी
विवेचनात्र न विवाद के न्यौं से एकदम भेद थे। वहांपर तो पुलिस
विभाग ने नियोजक की घोकांदार को नैकाएं रखन क दुई थ, न्यायकित
जीकांदार पुलिस के निर्वाचन में कार्यस्थ रहा था जिसे देख भी पुलिस
विभाग ही नियोजक में प्राप्त करने पद्धत कराया। हाँ तरह उक्त
जीकांदार को किन्हींकर प्राप्ति जिन्ह का हाँनार स्वेच्छा नहीं किया
गय. कर्मिक दोनों में यान्त्रिक व मजदूर के भवित्व नहीं थे। श्री जीत
नियोजक प्रतिनिधि को तरह से टा. पो. श्री राम द्वा वगाम नेतृत्व टाईको
करनी, ए. आई. आर. 1991 (पम ग) 2941 के न्याय
दृष्टान्त का भी सहूता लिया गया है जिसे देखत करन के सैक्षण
नेतृत्व का विवाद था गोरक्षना युक्त रुप राजनीति में
कार्यरत थे और अनेको जिरां के लिय एक ऐसे पुलिसी त्रियुक्त होता
था जिसके प्रबोन्ह अनेको लोकत ऐसीने उन्हें थे। ऐसाग ऐसीने का
कार्य नियोजक द्वारा तैयार कर गई नियोजित का विक बदान हेतु कर्वेसिंग
का हो कार्य करना था जिस बाबत ऐसीने लेसीन का लिलिट ग्रीर
एक्सट्राक्टर्मिट आव करते होते थे जिनका पर्फ एक्स्ट्राक्टर्मिट होलिंगस
नियोजा स्टार्टर्स आदि का कार्य करताथा जो था अर्थ उपरोक्त
परिस्थितियों में न्यायालय नैकाएं नेतृत्व करनका आपन नहीं
किया और यानाम उच्चाध न्यायालय नैकाएं नेतृत्व करनका किया:

"It is seen from the facts found that the appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales, a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisements including the need for posters holders and cinema

These duties do require the imaginative and creative minds which could not be termed as either mechanical, unskilled or clerical in nature. The supervising work of the other local salesman was part of his work as incidental to his main work for canvassing and promotion in the area of his operation. Such a person cannot be termed as workman."

१० उत्तराकां न्याय दृष्टान्तों के विरोध अधिक प्रतिनिधि ने मण्डास उत्तर न्यायालय को खण्ड पोठ का न्याय दृष्टान्त मैनेजमेंट थाफ इडियन ईन वर्षप एकार्यालय को प्रधिकारों इंइस्ट्रियल द्रिफ्फूनल १९९० (१) एल. प. न. जे. ५०, र उत्तराखण्ड न्याय दृष्टान्त का सहारा लिया गया है जिसमें एक और रिस्मित्या विवेचनाधार्थ विवाद के तथ्यों और परिस्थितियों से एकत्र मिलते जाते हैं। वहां पर भी टाईटो रिपोर्टिं एजेंट की रिपोर्ट का गई था, जिसका कार्य विवेचनाधार्थ विवाद के शो हाईकम अला के अनुसार ही आहकों के बरार और उको बचत खाता खोलना या प्रत्रेक पार्थ आहकों द्वारा बचत को गई राशि उनके खातों में जमा करना था। भानाय उत्तर न्यायालय के मतान्तरार.

Deposit mobilisation is one of the chief functions of the bank. As part of deposit mobilisation, the Tiny Deposit Scheme has been initiated by the bank. Under the rules framed by the bank with regard to the scheme, opening of the account will have to be done only in the presence of authorised official of the bank, though the collecting agent is permitted to receive deposits from door to door. It is the bank official who enroll customers even if there is a recommendation by the collecting agent with regard to any particular customer. The T.D.A. is undoubtedly engaged in the business of bank, namely deposit mobilisation. Though the remuneration of the T.D.A. is called commission in the agreement and in the appointment letter, it is remuneration as held by the Supreme Court in State of Assam Vs. Kanak Chandra Dutta (1968-1-LLJ-228) as well as the definition of the wages in the Act. The commission is a payment for hire or reward within the meaning of S. 2(s) of the I.D. Act. Nature of work of T.D.A. demands daily attendance in the bank and deposit of collections made on the previous day. Such T.D.A. is obliged to inform the bank in advance if the agent is not in a position to make the collection himself and whenever he appoints a delegate, this has to be done only with the prior permission of the bank and the T.D.A. is responsible for the conduct of such delegate. T.D.A. has to do some clerical work like filling of relevant forms, ledgers, pass books etc. Bank has got the power to instruct the agent not to enroll new subscribers at any time. The power to terminate the agency by the agent or giving a month's notice shows that it is a contract of service. The agent is taken to task when any depositor closes account within a period of two years from the commencement thereof. All the above facts will go to prove that there is sufficient control over the work of the agent by the bank and that the agent is not an independent contractor, but part of the organisation. The facts that no qualifications are prescribed for the post, that what is paid is only a commission, that agent can make alternate arrangement for doing the work, that there is no fixed norms for any amount collected that no time specifies as to when the agent should go to the bank or how long he could stay there, that the agent does not sign the attendance register and does not write any accounts, that the bank has power to transfer the agent have no significance whatsoever in view of the decisions of the Supreme Court. All the circumstances prove that Tiny Deposit Agent is a workman as defined in Section 2(S) of the I.D. Act.

मद्रास उच्च न्यायालय के उपरीकान याय द्रुष्टास के अन्तर्गत विवेदनमहीन विवाद के प्रार्थी हाकिम आली को मौजे गए कर्तव्य और उसके द्वारा किए गए आर्थों से यह अधिक जी धारा 2 (एस) के अन्तर्गत “कर्मकार” को परिभ्रान्ता में आता है।

नियोजक सांको और भार. ही. दुग्गल ने प्रति पर्सन्स में स्वीकार किया है जो भह पास बुक में फस्टमर के सामने हांच जो करके लाता था, पास बुक पर बैक के प्रधिकारी के हरेस्टर्स कॉम्पनी द्वारा मै दैश में दैश 10 ए. एम. से 2 बी. एम. तक जमा करा सकता था। अगर वह किसी फस्टमर से पैसे देने प्राप्ता और पास बुक में भी हांच जो कर लाता लेकिन पैसे जमा नहीं करता तो बैक उसके लियाक कार्योंती कर सकता था। भी दुग्गल ने यह भी कहा है कि प्रदर्श 4 व 5 पर लमारे बैक छ.रा जारी हुए हैं। बैक ने डिपोजिट बहाते के लिए एक स्कीम निकाली थी। जल्ता खोलना तथा डिपोजिट लेना भी बैक का काम है। आम परिक्रम से पैसे जमा करता भी बैक का विज्ञैम है। हाकिम घरों टाईनी डिपोजिट एजेंट का काम करता था और उसे खुलाते हैं तु जल्ता में जाता था। उसने खाते खुलाए थे जिस बाबत उसे 20 प्रतिशत कमीशन दिया जाता था। प्रदर्श एम-2 एसीमेंट के प्रमुखार हाकिम अली ने बहुर लिंक्योरिटी के 1000 रुपए बैक में जमा कराए थे जिसमें भी हाकिम अली के कर्तव्यों का उल्लेख है और बुटि करने पर वाट स्वरूप उसका कमीशन काटा जा सकता था इस बात का भी उल्लेख है। एजेंटों समाप्त करने की भी शर्त इसमें दर्ज है। अन्दरस्वर “दू” व “सौ” से भी कॉलेक्टिंग एजेंट के कर्तव्य वापिन तथा ट्रूटि व लापरवाही करने पर वाट स्वरूप पैनली का भी उल्लेख मिलता है जिन सब से मात्राः उच्च स्थायालय के उत्तरांत त्याग इटास्ट के अनुसार हाकिम अली भी धारा 2 (एस) के अन्दरकाल कर्मकार को परिमात्रा में भा जाता है। यह भी उल्लेखनीय है कि 9-11-78 से 12-3-80 तक हाकिम घरों ने बैक की रबतसर शाखा में जाकर उनके किताबों व लेजर बुकम में भी उत्त सब राशि अ खाताधारियों की प्रविष्टियां की थी जो उसने बहुत टाईनी डिपोजिट कॉलेक्टर द्वारा भार जाकर लीभों से समर्पक कर खाते खुलाए थे और जिनसे बधत राशि वसूल कर बैक में जमा कराई थी। उन तथ्यों को हाकिम अली ने क्षेत्र के अनुसार ही अपने शपथ पत्र में भी दर्ज किया है जिसकी पुष्टि बैक हारा जारी पत्र एम-3 से भी होती है। उत्तरांत मीडिक व प्रालेखि माध्यम के विभीत बैक भी तरफ से भ तो क्षेत्र के प्रश्नकारतर में यह कहा गया है कि हाकिम अली ने कभी भी बैक की किताबों या बही खातों में कोई प्रविष्टि नहीं की हो भी न हो हाकिम अली ने इस विषय में प्रति पर्चीका की गई है यहां लक कि नियोजक नोडी भी दुग्गल ने भी अपने शपथ पत्र में उक्त तथ्यों का प्रतिकार भी हो किया है अटिक भी दुग्गल ने अपने शपथ पत्र की वरण में 6 में यह स्वीकार किया है कि बैक की रबतसर शाखा के प्रबंधक ने 12-3-80 को हाकिम अली को एक पत्र दिया था कि बह बैक की किताबों व खातों में कोई कार्य न करे। अब यह भी सिद्ध है कि हारा अली ने 8-11-78 से 12-3-80 तक बैक के लातों व किताबों से दबतसर शाखा के अधर बैटकर प्रविष्टियों को है। आपतियों और निधि के उत्तरांत समस्त कारणों से प्रार्थी को यह प्रार्थनिक आवाज आधारहीन न गानते हुए आरंज की जाती है और हाकिम अली को भाई. डी. एक्ट, 1947 के प्रत्यंत (धारा 2 एस) “कर्मकार” घोषित किया जाता है।

12. प्रार्थी शंख ने कलेम में ही यह दर्ज किया है कि हाकिम अली ने 9-11-78 से 12-5-80 तक वैका की रावतस्त शास्त्र में बतौर टार्जीनी डिपार्टमेंट कीम एजेंट का कार्ब किया है और 12 अनवरी 1981 को यमात द्वारा एक कलन्डर वर्ष में उसने 240 दिवस से अधिक की सेवा पूरी कर ली थी किंतु भी उन्हें धारा 15 एक के प्रतिवादीनों का लाभ नहीं दिया गया। अप्रैल ने कलेम के प्रत्युत्तर द्वारा उक्त सत्यों को अस्त करन नहीं किया है बल्कि प्रत्यमिय आन्ति हो दर्ज की है कि प्रतिवादीरों में भालिक भजूरों के मंवंध नहीं थे और हाकिम अली कार्जकार की परिभाषा में नहीं आता है। इनके लिए अनुमान द्वारा हाकिम भजूरा ने अपने व्यवय पत्र में भी दर्ज किया है कि 'नो 1-1-81 को भावान हुए एक कर्तृपक्ष वर्ष में 240 दिवस से अधिक सेवा पूर्ण करते थे और उन्हें धारा 15-एक के प्रतिवादीनों का लाभ नहीं दिया थार्याति छंटनी करते समय न तो एक जाह का नोटिम, न नोटिस के गवाह में एक माह का बेतत अधिक छंटन का गुप्रावजा भी नहीं दिया गया। उक्त तथ्यों वालत हाकिम धर्द से नाम भाव की भी प्रति परेशान नहीं की गई है यद्युपरी तक कि विदेशी भावान श्री दुरगल ने भी अपने व्यवय पत्र में उक्त तथ्यों का प्रतिवाद नहीं किया है।

है। स्वेच्छा रूप में प्रपार्थी ने धारा 35-एक की पालना नहीं की है और इसलिए अधिकार का सेवा गुडिं से धारा 25-एक के प्रावधानों के विपरीत होने से ल्प। ही प्रत्युचि, अवैष्ट एवं शून्य हो जाता है और अधिकारी द्वाकिम अली टाईनो डिपोजिट एजेंट के रूप में नियोजित होने का अधिकारी हो गया है। उसको सेवा का निरंतरता वायम रखा जाता है। हाकिम अली की सेवा नुक्ति 12-1-81 को की गई था जबकि उसने समस्तीता अधिकारों के भाग में विवाद मन् 1986 में छदा किया था। इन परिस्थितियों में यह अधिक 12-1-81 से 21-12-85 तक को प्रवधि का बेतन प्राप्त करने का अधिकारी नहीं है और इस निवेदा का अधिनियम निम्न प्रकार किया जाता है।

"अधिकारी द्वाकिम अली, टाईनो डिपोजिट एजेंट की 12-1-81 से को गई छठना न्यायोचित नहीं है और इसे 351 पर पर नियोजित घोषित किया जाता है। उन्हीं मेवाओं का निरन्मरण कायम रखो जाता है। 12-1-81 से 31-12-85 तक का अवधि का उसे बेतन नहीं हिलाया जाता है। नियोजक को भावेण है कि इस प्रविधिनियम के प्रतिशान के अद्य तोन माह हाकिम अली को उसके पद पर नियोजित। कर उपके avtag.commission on fix करने हुए उसे न्यायालिकार्यालय शन भी नियम के अनुसार अदा करने गम्भीरा 12 प्रतिशत वाधक दर से अवाज भा देना पड़ेगा। 100-एवं अर्बा गुण्याली भी दिलाया जाता है।"

13 अवाई का प्रति वास्ते प्रकाशित मानन सरकार को अनुरोध धारा 12(1) अधिनियम के पार्दी जाए।

जगन्न शिर, पीठानोन अधिकारी

मई विल्ली, 17 जुलाई 1992

का पा 1:01 -- शौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार स्टेट बैंक अफ बीकानेर एण्ड जयपुर के प्रबन्धनक के सम्बन्ध नियोजकों और उनके कर्मकारों के भीच, अनुबंध में नियिष्ट शौद्धोगिक विवाद में शौद्धोगिक अधिकारण, जयपुर के पक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 16-7-92 को प्राप्त हुआ था।

[संक्षा एल- 12012/48/85-डी-II (ए)]

सुधार चन्द शर्मा, डेस्ट्र अधिकारी

New Delhi, the 17th July, 1992

S.O. 2203—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 16-7-1992

[No. L-12012/48/85-D. II (A)]

S. C. SHARMA, Desk Officer

अनन्दगढ़

केन्द्रीय शौद्धोगिक न्यायालिकारण, जयपुर

केस में सी आई टी 10/86

रैफरेंस: भारत सरकार, शैम मवालाय, मई विल्ली का भावेण अमांक एल-12012/48/85-डी-11 (ए) विनांक 19-2-1986

श्री ओ पी शर्मा मार्केंट राजस्थान बैंक एम्प्लाई यनियन जयपुर।

--प्रार्थी

बताम

प्रबन्धक, राजस्थान स्टेट बैंक अफ बीक बैंक एवं जयपुर,

,-प्रपार्थी

उपस्थित

माननीय न्यायाधीश श्री अगरामहिंदी, आर एच जे एम

प्रपार्थी की ओर से

श्री जे एम शाह

प्रपार्थी की ओर से

श्री दी पाल माधुर

विनांक अवाई

20 अप्रैल, 1992

अवाई

भारत सरकार, शैम मवालाय, मई दिल्ली न अर्दे उत्तरोक्त आवेदन धारा निम्न विवाद इस न्यायालिकारण के वास्ते अधिनियम शौद्धोगिक विवाद अधिनियम 1947 की धारा 10 (1) (बी) के अनुरोध प्रेषित किया है।

"क्या स्टेट बैंक आफ बीकानेर एण्ड जयपुर न जयपुर के प्राप्तिनियंत्र की श्री ओ पी शर्मा, बैंक की मेवाओं को जुलाई 1971 से समाप्त करने और नए डाक्टोरों तो दूड़िया करने मन्द उसे और रोजगार प्रदान करने हेतु उसके नाम पर विवाद न करने की कार्यवाही न्यायोचित है। यदि नहीं तो प्रतिरोध दर्शाएं हो रहा तो क्या कार्यवाही न्यायोचित है।"

2 राजस्थान बैंक एम्प्लाई यनियन -जयपुर, जिसे न्यायालिकारण प्रपार्थी संघ संघोचित किया है, ने नियोजित करने प्रहल दिया कि उनका मंद मास्ता प्राप्त है गिसमें राजस्थान के विभिन्न बैंकों से कार्य करने वाले कर्मचारी सदस्य हैं। श्रपार्थी बैंक में कार्य करने वाले कर्मचारी भी प्रपार्थी संघ के सदस्य हैं। श्री ओ पी शर्मा प्रपार्थी अधिनियम भी प्रपार्थी संघ का सदस्य है। प्रपार्थी संघ का यह भी कहना है कि अर्दे ओ पी शर्मा का प्रथम नियुक्ति फरवरी 1969 से वेतन बैंक की दौवा शाखा में हुई थी जिसने वहां पर अपस्त 1971 तक कार्य किया है। परंतु बीक-बीक में बैंक के अधिकारियों ने अर्दे ओ पी शर्मा में विवाद जेन विवाद है, ऐसा अधिकार को नियमित होने से वंचा करने की दृष्टि से व अन्य शैम कानूनों के सामने से विवाद करने की दृष्टि से यह भी कहना है। अधिकार की सेवाएं 12-8-71 से यह कहकर भास्त कर दी गई कि उसके बाम की आवश्यकता नहीं है। प्रपार्थी पा नहीं दी कहा है कि थोड़ प्रकाश शर्मा को सेवा मुक्त करने के बाद विषयों बैंक की दौवा शाखा में मन् 1972 में संवेदी सतीश नागर व प्रदीप दीप को नियुक्त किया गया था जो शर्मा को संघुक्त भी सूचना नहीं दी गई। उक्त दोनों कर्मचारियों को नियुक्त की जानकारी श्री शर्मा को मिली तो उसने बैंक के अधिकारियों से मिलकर नियुक्त की मांग की। जिस बाबत पहले तो अधिकारी अधिकार की आवश्यकता थी और बाद में उक्त दोनों कर्मचारियों को भी सप्त 1974 में मेवा मुक्त कर दिया। प्रपार्थी संघ यह भी कहता है कि 18-8-84 को विषयों बैंक ने उक्त दोनों कर्मचारियों को नियमित नियुक्त के दी जो भर्ती भी कार्य नह रहे हैं और इस प्रकार प्रपार्थी नियोजक ने धारा 25-जी और 25-एव के प्रावधानों को उल्लंघन किया है। इसलिए ओम प्रकाश शर्मा को 16-8-84 से भेजा में बहस करते हुए नियमित कर समस्त सुविधाओं का लाभ प्रदान किया जावे और पूरा वेतन दिलाया जावे।

3 प्रपार्थी बैंक ने अर्द्य प्रत्युत्तर बैंक के कर्मनों को अस्वीकार करते हुए प्राप्तिनियम आपस्थितीय भी है कि बैंक पर प्रपार्थी संघ के सहायक सक्षिप्त भी पी शर्मा के हस्ताक्षर हैं जो प्रपार्थी अधिकार से जिन व्यक्ति

है तथा जो कलेम पर हस्ताभार करने के लिए अधिकृत नहीं है। प्रार्थी संघ का साम्यता प्राप्त होना जो स्वीकार किया है परन्तु ओम प्रकाश प्रार्थी संघ का सम्मत नहीं है इसलिए इन अधिकृत का विवाद प्रार्थी संघ उठाने के लिए अधिकृत नहीं है। अप्रार्थी का यह भी कथन है कि अधिक ओम प्रकाश शर्मा ने 12 माह में 240 दिवस सेवा पूरी नहीं की है और इसकी सेवा मुकिन सन् 1971 में की गई थी जिसके 15 वर्ष बाद विवाद खड़ा गिया गया है जो भी भ्रष्टाचार द्वारा से करने के काल वर्त्तन है इनिए आरिश करने योग्य है। इस विषय में अप्रार्थी यह भी कहते हैं कि मंभवतः अधिक अन्य किसी आनंदप्रद नियोजन में या इसलिए 15 वर्ष उपरान्त विवाद खड़ा किया है। नियोजक के अनुग्राह लागू 25-एक, 2-जी व 25-एक के प्रावधान लागू नहीं होते हैं और धारा 2 (११) (बीमी) के प्रावधान थी रिटोर्स-डिक्टिव इफैक्ट ने लागू होने पे अधिक किसी लाभ का अविकारी नहीं होता। नियोजक का कहाना है कि अधिक की नियुक्ति अस्थाई तौर पर नियित अनुष्ठि के लिए की गई थी नियुक्त उन्नीष्व नियुक्ति आदेश में ही किया गया था जो इसे अधिक ने स्वेच्छा में स्वीकार किया था इसलिए भी यह अधिक अब विन रूपन नहीं कर सकता और एप्टोपन का विद्वान्त लाग चेना है। नियोजक यदि स्वीकार करता है कि समीक्षा लागू की लियकिन दौसा जाक्का में विवर 1973 में अस्थाई रूप में की गई थी और श्री प्रस्ताव भीष्मा की नियुक्ति भी मार्च 1974 में अस्थाई रूप में की गई थी। उक्त दोनों अधिकारियों ने 270 दिवस की सेवा अवधि पूरी कर से थी इसलिए उन्हें अधिकारियों ने आवायक प्रक्रिया अपनाने के उपरान्त नियुक्त दी गई थी। अधिक ओम प्रकाश शर्मा ने 270 विवाद की सेवा परी नहीं की थी इसलिए उसे उक्त प्रवत का लाभ नहीं हुआ गया। नियोजक के अनुग्राह वर्ष 1978 में संघ के साथ उसका एक समझौता बनाया था जिसकी अनुग्राहना में ही उस अधिकारियों को नियमित नियुक्ति ही गई है जो या तो उक्त मरकान के अनुमार 270 दिवस की सेवा पूरी कर चुके थे अथवा 210 दिवस की सेवा अनुप्रूपी करने के थे इसलिए संघ अब उक्त मरकान के विपरीत यह नहीं कह सकता कि 240 या 270 दिवस में कम सेवा अवधि वालों को भी नियमित नियुक्ति की थी। इस प्रकाश नियोजक के अनुमार अप्रार्थी संघ का वधन व्यवने योग्य नहीं है और अधिक ओम प्रकाश शर्मा किसी अनुतोष का अविकारी नहीं है।

4. अपने कथमों के मध्यमें में अधिक ओम प्रकाश शर्मा ने स्वयं का साप्तप पत्र पेश कर मरकान के प्रतिनिधि ने जिरह की है। प्रालेखिक माध्यम में डब्ल्यू-1 लगायन डब्ल्यू-8 फोटो प्रतियों पेश की गई है। इनके विपरीत नियोजक की मरकान से सर्वांगी सेज प्रकाश शर्मा, अजीन विंड यादव तथा केरी चंद सुधार ने शपथ पत्र पेश किये हैं जिनसे मध्य के प्रतिनिधि ने जिरह की है। प्रालेखिक माध्यम में भी कुछ फोटो प्रतियों पेश की गई है। तत्प्रवान् मैंने पत्रकारों के प्रतिनिधियों को वस्त्राभूवीं मूना और पत्ताली का निरीक्षण किया।

5. जहां तक प्रारंभिक आपतियों का प्रश्न है, श्री ओम प्रकाश शर्मा ने कहा है कि यह राज्यान्वयन वैद्याम्बाइज रूपियन का स्वैष्टि है, फरवरी 960 में आ। तक है। उसने 1969 से 1974 तक 50 पैसे प्रति माह भंदा दिया है उसके बाद से बब्ल तक 1/शपथ प्रति माह चंदा देता रहा है। श्री रमलाल जी अप्टोपन हसारी गृहियन के अध्यक्ष थे और श्री महेश निया सचिव है। उपरोक्त माध्यम के विपरीत नियोजक के किर्मी भी मार्गों ने यह नहीं कहा है कि अधिक ओम प्रकाश शर्मा प्रार्थी संघ का सदस्य न हो अरवा उसने चंदा नहीं दिया है। यह भी उल्लेखनीय है कि अधीशोगिक विवाद अधिनियम 1947 की धारा 2-ए का संशोधन स्तोत्र के उपरान्त सेवा मुकिन से संबंधित अधिक स्वयं भी उठाने के लिए अधिकृत है अतः उपरोक्त समस्त कारणों से अप्रार्थी नियोजक द्वारा उन्हें गई प्रारंभिक आपतियों निराधार मानते हुए अपास्त की जाती है।

6. जहां तक विवाद के काल वर्जित होने का प्रश्न है, स्वीकृत लूप में अधिक की सेवा मुकिन जुलाई 1971 में की गई थी और यह रेफरेंस 19-2-86 को की गई है जो निश्चिन तौर पर विवरित तो है परन्तु अधीशोगिक विवाद अधिनियम 1947 में ऐसी कोई समय सीमा निर्धारित नहीं है जिसके अनुमार ही विवाद उठाया जा सके। इसियन लिमिटेशन पार्ट 1963 का आर्टिकल 137 अधीशोगिक विवाद अधिनियम लागू मही होते हैं इसलिए 15 वर्ष उपरान्त उठाया गया यह विवाद भी काल वर्जित करार नहीं दिया जा सकता। यहां पर यह भी उल्लेखनीय है कि अधिक ने एक कलेष्ठर वर्ष में 240 दिवस की सेवा अवधि पूरी नहीं की थी इसलिए धारा 25-एक के अनुग्राह नियुक्ति नहीं हुआ है विक्टिक धारा 25-एक के अधिग्राह विवाद उठाया गया है क्योंकि अधिक की सेवा मुकिन के उपरान्त सन् 1973 में सतीश नागर को व 1974 में प्रद्वन्द्व भीणा की भी अधिक की तरह अस्थाई का में तियोगित किया गया था। क्लेम की वर्ष म. 5 में ही दर्ज है कि उक्त दोनों अधिकारियों की नियुक्ति की सूचना मिलने पर यह अधिक द्वंद्व के प्रविकारियों से मिला जो उसे आपासान देने रहे और अंतीगतवा 1974 में उन दोनों अधिकारियों को भी सेवा मुक्त कर दिया गया। मेरो राय में अधिक से घणवा प्रार्थी संघ में यह अधेक्षा भी कि वे सन् 1974 के उपरान्त शीघ्राप्तीय समझौता अविकारी के समझ विवाद खड़ा करते। परन्तु उपरोक्त विनाश भाव से उठाया गया विवाद काल वर्जित करार नहीं दिया जा सकता। इस विषय में मेरी विगाहित कारपोरेशन बनाम भृगुमूल्यम 1984 लैब, आई सी. 1880 पर उपरान्त मद्रास उच्च न्यायालय के न्याय दृष्टान्त के न्याय दृष्टान्त का उल्लेख किया जा सकता है जहां पर चार वर्ष 6 माह उपरान्त विवाद उठाया गया था और मद्रास उच्च न्यायालय ने मानोपी उच्चतम न्यायालय के न्याय दृष्टान्त एवं न सर्विसेज प्राइवेट लि. बनाम इंडिस्ट्रियल डिव्यूल फारिवाकाव 1979 लैब आई. सी. 1, के न्याय दृष्टान्त पर निर्भर करते हुए यह भत्त दृष्टि किया है कि समझौता अविकारी के उक्त विवाद से विवाद उठाने भाव से यह नहीं कहा जा सकता कि रैकरेंस नियुक्ति है। अस: उपरोक्त समस्त कारणों से यह प्रारंभिक आपति भी निराधार मानते हुए अपास्त की जाती है।

7. गुणावृण पर क्लेम के अनुमार ओम प्रकाश शर्मा में अपने शपथ पत्र में भी कहा है कि उपने करवारी 1969 से अपास्त 1971 तक विवादी द्वंद्व की दौसा जाक्का में भी अन्ति के पद पर कार्य किया है परन्तु द्वंद्व के प्रविकारियों ने उसकी सेवाओं को बोल्ड भीच में जरूर द्वंद्व दे देते थे और कुछ दिन बाद बाप्तम सेवा में रख लेते थे तथा अंतीगतवा 12-8-71 को यह कहकर सेवा मुक्त कर दिया कि उसके काम की आवश्यकता नहीं है। न तो क्लेम में और भी ओम प्रकाश ने अपने शपथ पत्र में यह कहा है कि उसने 240 दिवस की सेवा एक कलेष्ठर वर्ष में पूरी करा है। नियोजक सामी तेज प्रकाश शर्मा भी कहा है कि अधिक ने कुल 96 दिवस तक शी कार्य किया है। इस परिस्थितियों में धारा 25-एक के आवधान लागू नहीं है।

8. जहां तक धारा 25-एक के प्रावधान लागू करने का प्रश्न है गुरुनारात उच्च न्यायालय ने गुरुनारात स्टेट मरीन ट्रस्ट कोरपोरेशन बनाम बोपक वैमाई 1987 लैब आई. सी. 1381 के न्याय दृष्टान्त में यह स्पष्ट अवधार्था हो है कि वाहे किसी अधिक ने एक कलेष्ठर वर्ष में 240 दिवस की सेवा पूरी नहीं की ही और वाहे धारा 25-एक के प्रावधान लागू नहीं हो आयें। उक्त न्याय दृष्टान्त में शो बोपक देसाई ने 12-1-83 से 11-4-83 तक सेवा की था और उसने भी 240 दिवस सेवा अवधि पूरी नहीं की थी परन्तु उसकी सेवा मुक्त के उत्तरान वर्षी कार्य करने के लिए नहीं नियुक्ति की गई और बोपक देसाई की सूचित नहीं की दिया इसलिए उसे धारा 25-एक के प्रावधान लागू हो आयें। उक्त न्याय दृष्टान्त में शो बोपक देसाई ने 12-1-83 से 11-4-83 तक सेवा की था और उसने भी 240 दिवस सेवा अवधि पूरी नहीं की थी परन्तु उसकी सेवा मुक्त के उत्तरान वर्षी कार्य करने के लिए नहीं नियुक्ति की गई और बोपक देसाई की सूचित नहीं की दिया इसलिए उसे धारा 25-एक के प्रावधान लागू हो आयें। इस विषय में राजस्थान उच्च न्यायालय का एकल पौठ के न्याय दृष्टान्त एस. बी. तिवारी रिट फिल्म नं. 72281 द्वेष प्रकाश उपरान्त बनाम एस. बी. बी. जे. नियंत्र 10-1-91 का भी उल्लेख किया जा सकता है जिसकी कोटी प्रति वर्ष के प्रतिनिधि ने पेश की है और जिसके मध्यस्थार भी 240 दिवस की

सेवा प्रबंधि पूरी नहीं करने पर भी बारा 25-एच के प्रावधान सार्ग किए गए थे। राजस्थान उच्च न्यायालय की खण्ड पीठ ने रामचन्द्र यादव बनाम भार. एस. भार. टी. सी., 1989 (1) भार. एल. भार 636 के न्याय दृष्टिकोण में भी बारा 25-एच को मैट्टेडरी करार दिया था क्योंकि अभियोगों की सेवा मुक्ति करने के बाबा वही कार्य करने के लिए नई नियुक्तियों की गई थी और पूर्व में सेवा मुक्त अभियोगों को उसके सूचना नहीं दी गई। अतः उपरोक्त समस्त कारणों से बारा 25-एच का सारा नहीं होते, पर भी बारा 25-एच को लागू किया जा सकता है तथा नियोजक प्रतिनिधि की यह प्रापति भी निराशार मानते हुए दारिज की जाती है।

9. मियोजक प्रतिनिधि की एक आपसि यह भी थी कि अभिक की नियुक्ति आवेदन में ही यह दर्ज कर दिया गया था कि उसे एक निपिक्त प्रबन्धि के लिए भर्त्याई रूप में नियुक्त ही जा रही है, उक्त प्रबन्धि साबित होते ही उसकी सेवाएँ स्वतः ही समाप्त हो जाएंगी। उक्त सेवा गते अभिक ने स्वेच्छा से स्वीकारकर ली थी इसलिए वह व्यक्त व्यक्ति इसके विपरीत कथन करने के लिए एस्टाप्ल है तथा औद्योगिक विद्याव व्यवस्था नियम 1947 की धारा 2 (००) में (बी बी) का संशोधन 18-४-८४ से लागू हो गया था जिसे भी रिट्रोस्ट्रिक्ट इकैस्ट से लागू किया गया है और इसलिए यह अभिक किसी प्रतीकारी नहीं है। अपने कथनों के समर्थन में नियोजक प्रतिनिधि ने '24-२-७१, 10-४-७१ तथा २-८-७१ से नियुक्त आवेदन की फोटो प्रतियोगीता की है। भीने उक्त नियुक्ति आवेदनों का भलीभांति अध्ययन किया परन्तु भीने राय में नियुक्त आवेदन में ही उक्त सेवा गते दर्ज कर देने मात्र से अभिक की धारा 25-एच के लाभ से विक्षित नहीं किया जा सकता और न ही धारा 2 (००) (बी बी) के संशोधन को 18-४-८४ के प्रवृत्त ही रिट्रोस्ट्रिक्ट-दस्ती लागू किया जा सकता है। इस विषय में इलाहाबाद उच्च न्यायालय की खण्ड पीठ के व्याय दृष्टान्त एन. सी. श्रीबाल्कव बनाम स्ट्रटर इण्डिया सि. 1987 (१) एन. एन. १९६ का उल्लेख किया जा सकता है। राज्यालय उच्च न्यायालय ने भी 1988 (१) एन. एन. एन. ७२४ के व्याय दृष्टान्त में धारा 2 (००) (बी बी) को रिट्रोस्ट्रिक्ट इकैस्ट से आपरेटिव नहीं माना है। यहाँ पर यह उल्लेख भीय है कि जहाँ पर नियुक्ति आवेदन में निपिक्त प्रबन्धि का उल्लेख किया जाता है और जिसकी समर्थन के पश्चात काम होते हुए भी उक्त सेवा प्रबन्धि नहीं बढ़ाई जाती है तो धारा 2 (००) (बी बी) का लाभ नियोजक नहीं उठा सकता। इस विषय में पंजाब व इडियाणा उच्च न्यायालय इलाहारि सिंह बनाम कृष्णेन्द्र सैन्यल कौप्रापरेटिव ब्रैक 1990 (२) एन. एन. एन. ५७६ के व्याय दृष्टान्त का उल्लेख किया जा सकता है। अतः भीने राय में भी 2 (००) (बी बी) को रिट्रोस्ट्रिक्टिवी लागू नहीं किया जा सकता। मानवीय उच्चालय ने बैनेट कम्पनी बनाम भी. बी. दासगुप्ता, ए. आई. पार. 1970 (एन. सी.) ४२६ के व्याय दृष्टान्त में कहा है "औद्योगिक विद्यार्थी में इक्वीसीस्ट, एस्ट्रोपल 'बीए डेवर भारि जीसी ईक्सोकल मद्दे लागू नहीं किए जा सकते।" गुजरात उच्च न्यायालय ने भी 1992 बीव. आई. सी. १९७ के व्याय दृष्टान्त में उक्त व्यवस्था को बोहराया है। अतः उपरोक्त ममत्त कारणों से नियोजक प्रतिनिधि का उक्त तरफ भी निराधार मानते हुए आपास किया जाता है।

10. कलेम की चरण सं. 4 में यह वर्जे किया गया है कि ओम प्रकाश शर्मा भी सेवा मुक्तिके बाद बैंक की दीसा जाका में ही सन 1972 में ही सतीश नागर व प्रह्लाद मीणा भी नियुक्तियाँ भी गई थी जिसकी मूलता ओम प्रकाश शर्मा को नहीं दी गई। कलेम के प्रस्तुतर की चरण सं. 4 में ही नियोजक ने यह स्वीकार किया है कि सतीश नागर की विसम्बर 1973 और प्रह्लाद मीणा को मार्च 1972 में प्रस्तावित करप से नियुक्त दी गई थी। नियोजक साधी भी तेज प्रकाश शर्मा ने भी प्रति परीक्षा में यह स्वीकार किया है कि सतीश नागर की नियुक्ति विसम्बर 1973 में हुई थी और प्रह्लाद मीणा की नियुक्ति मार्च 1974 में हुई थी। नियोजक साधी प्रति परीक्षा में यह भी कहता है कि उसे पता नहीं कि उपरोक्त वोटों की नियुक्ति से पूर्व ओम प्रकाश शर्मा को नीतिक दिया था या नहीं। जिससे भी अभिक के कदमों की ही पुष्टि

होता है। अलेम का चरण सं. 5 में हो यह इसी है कि उक्त दोनों कर्मचारियों को भी सन् 1974 में मेवा मुक्त कर दिया और तत्पश्चात् 16-8-84 को उक्त दोनों कर्मचारियों को नियमित नियुक्ति दी गई। नियमित नियुक्ति बाबू श्री प्रस्तुतर में ही लिगोड़क र्षी करता है कि उक्त दोनों अधिकारियों ने 270 दिवांग में अधिक मेवा प्रयोग कर्मी थी इसलिए सरकूलर म पी. ई. आर 115/83 दिनांक 10-1-83 अनुसार उन दोनों अधिकारियों का नियमित नियुक्ति दी गई थी। अधिक ओम प्रकाश शर्मा से 270 दिवांग की मेवा प्रयोग नहीं की थी इसलिए उसे उक्त सरकूलर का लाभ नहीं दिया गया। अब यहाँ पर उपलब्ध गाद्य से यह साधित है कि ओम प्रकाश शर्मा को जुलाई 1971 में मेवा मुक्ति के उपरान्त दिसंबर 1973 में सर्वीश नागर च भावे में प्रश्नावाद भीणा को प्रस्तुती पोओन के पद पर नियुक्त दिया गया था जिन्हें सन् 1974 में मेवा मुक्त कर दिया गया था इसलिए जितनी अवधि तक सर्वीश नागर च प्रश्नावाद मोणा का अस्थाई हर में नियुक्त दी गई था उसने अवधि यह अधिक बैतान प्राप्त करने का अधिकारी बने भए गये मेवा 25-एच की अवैधता होने पर अमित धूर्वनियोगित होने का अधिकारी नहीं है बल्कि उसनी ही अवधि का बैतान प्राप्त करने का अधिकारी है जितनी अवधि के लिए उसकी मेवा मुक्ति को उतारन उस सूचित नियुक्ति दी गयी थी। मैं अधिक प्रतिलिपि के उक्त तर्क में नहमन नहीं हूँ कि अगर इस अधिक की नियोजन अवधि बढ़ाई जाती तो यह भी 270 दिवांग की नियर्वात अवधि पूरी कर लेना और उक्त मरकूलर के आधार पर नियमित नियुक्ति प्राप्त कर लेना। अब उपरोक्त समस्त कारणों से इस नियंत्रण का अधिनियम तिमन प्रकार से किया जाता है :

“श्री ओम प्रकाश शर्मा, कवर्क की जुनाई 1971 में सेवा मुकिन करना उचित एवं वैध है परन्तु शतवर्षात् सतीण नामर व प्रहनाव मीणा को प्रस्थाई पद पर नियुक्त कर लिया और इस श्रमिक को सूचना नहीं दी गई। इसलिए जिसका सम्बन्ध तक उसका व्यक्तिवयों का अस्थाई काम में विवृत रखा जाए, उसकी अवधि तक का वैतन प्राप्त करने का यह श्रमिक प्रतिवारो है। अर्थात् नियोजक ने अंदर तोन माह उसके बिना अवान नहीं किया तो 12 प्रतिशत आर्थिक पर व्याज भी देना पड़ेगा। 100 रुपये वर्षा मुकदमा भी विलाया जाता है।”

11. प्रवार्ड की प्रति भारत गरजार का प्रकाशनार्थ प्रस्तुत भारत 17(1) प्रधिनियम ऐंजी जावे ।

जगत् विद्, पौड़ामोत् अधिकारी

नई दिल्ली, 17 जुलाई, 1992

का.आ. ७११०१ - दोस्रा नं. ५५५ रोटोरा, १९४७ (१९४७ का १४) की घारा १७ के अनुसरण में, नेट्वर्क भरकार बूदी वित्तीकार अधिकारीय आमीण बैंक के प्राधारांत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाय में औद्योगिक अधिकरण, यायुर के पंचपट को प्रकाशित करती है, जो केर्डीय सरकार को १६-७-९२ को भास्त द्वारा था।

[संख्या एन-12012/291/86-शी II (ए)]

मुमाप चन्द्र शर्मा, ईस्क प्रधिकारी

New Delhi, the 17th July, 1992.

S.O. 2204.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bundi-Chittor

garh Kshetriya Gramin Bank and their workmen, which was received by the Central Government on 16-7-1992.

[No. L-12012/291/86-D. II (A)]

S. C. SHARMA, Desk Officer.

अनुसन्धि

केन्द्रीय अधिकारिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 34/89

रेफरेंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश
फ्रमांक एल 12012/291/86/वी II-ए.डी.वी.वी. I-दि. 3-3-89
श्री राम दयाल यादव, मार्फत प्राप्त ईंटिया गार्मीन ब्रैक बर्की आर्गेनाह जैशन
—प्रार्थी

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अध्यध, यंदी खितोङ्ग तु खेलीय प्रानीण बैफ, यंदी ।

—मात्रार्थी

अप्रियत

प्रसारी की ओर से : श्री पात्र के काला

शार्की श्री बोद्ध से : श्री भार श्री जैस

सिनेमा भवान : 10 अगस्त 1892

10

भारत सरकार, धर्म मंत्रालय, नई दिल्ली ने निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनियम औद्योगिक विवाद अधिनियम की धारा 10(1)(प्र) के अंतर्गत प्रेषित किया है :

"Whether Shri Ram Dayal Yadav, Ex-Branch Manager employed by the Bundi-Chittorgarh Kshetriya Gramin Bank, Bundi is a workman under the I. D. Act and if so, the termination of services of Shri Yadav by the bank is justified ? If not, what relief, the ex employee is entitled to ?"

2. आल इंडिया गार्मीण बैंक कर्मसु आर्गेनेशन, जयपुर, (जिसे तत्पश्चात प्रार्थी संघ रांदोवित किया है) ने जरिए कलेम प्रकट किया कि संस्थान अधिक श्री राम वायाल यादव जिसकी नियमित विषयी संस्थान में प्रधिकारी के पद पर हुई और प्रथम नियुक्ति बंदी शास्त्रा में अतोर मैनेजर के पद भी गई थी जिसका नियुक्ति आदेश अनेकांगर-1 है। उक्त नियुक्ति दो वर्ष के परिवेक्षा काल पर हुई थी जिसकी अनुपालन में श्री यादव ने 7-8-85 को अपनी ड्यूटी जोहन कर ली थी। तत्पश्चात श्री यादव का स्थायान्तरण विषयी संस्थान की शम्भुरु शास्त्रा में ब्रांच मैनेजर के पद पर कर दिया गया जहां पर 10-12-75 के आदेश (अनेकांगर-4) द्वारा 12-12-83 से श्री यादव को सेवा भूक्त कर दिया गया। प्रार्थी संघ का कहना है कि विषयी संस्थान में कार्यरत प्रबन्धक का ड्यूटी चार्ट अनेकांगर-7 है। इस ड्यूटी चार्ट में क्रम सं. 2(X)(XI)(XLV) (XVII) (XVIII) XIX सप्ता (XXIV) पर उल्लिखित कार्य करने का न तो श्री यादव को अधिकार था और न ही उस्में कभी भी ये कार्य किये। इसके अतिरिक्त इस चार्ट को क्रम सं. 2 (I) (II) व (III) पर उल्लिखित कर्तव्य श्री यादव प्रशान कार्यालय के निर्देशानुसार करते थे। चार्ट में उल्लिखित केव कार्य भी श्री यादव करते थे। प्रार्थी संघ के अनुसार यद्यपि श्री यादव का पद नाम ब्रांच मैनेजर था परन्तु उसे कोई प्रशासनिक या सुपरवाइजरी अधिकार नहीं थे यहां सक कि ब्रांच पर कार्यरत कर्तव्यारियों के प्राकस्थिमक अवकाश भी प्रशान कार्यालय से ही स्वीकृत किये जाते थे। श्री यादव को ब्रांच में नियुक्त कर्मचारियों के विषय किसी भी

प्रकार के अन्तरालमात्रावाली कार्यवाही करने या उनका सुपरवीजन करने के प्रधिकार नहीं थे। श्री यादव जो कार्य करते थे वे कनेक्टिविल व मैनप्राय प्रकृति के थे और उमस्का मामिक वेतन 1600 रुपये से कम था। सेवा भूक्ति के मायथ श्री यादव को अनेकसंचर-4 के प्रतुसार महावाही भत्ता व सक्षात् किराया भत्ता मिलाकर कुल 1355 रुपये मिलते थे और इस प्रकार श्री यादव औद्योगिक विद्यावाच प्रविनियम 1947 की धारा 2(एम) के अनुसार अमिक को परिभाषा में नहीं आते हैं।

3. प्रार्थी संघ यह भी कहता है कि सेवा मुक्ति प्रादेश दिनांक 10-12-85 में रेता मुक्ति का कारण बैंक को श्री यादव की "सेवाओं की आवश्यकता नहीं" होना बनाया है उनकि बास्तविकता इसके विपरीत है। प्रार्थी ने अति पवर कमांड 4167 रिनांक 22-11-85 (अनेकसंवर 2) द्वारा श्री यादव के विश्वास बैंक के रिटार्ड में हैराकीरी का गंभीर आरोप लगाया था जिसका उत्तर श्री श्री यादव ने 28-11-85 (अनेकसंवर-3) द्वारा दे दिया था। इनपे यह स्पष्ट है कि श्री श्री यादव की सेवा मुक्ति नयकपिन दुरुवरण के कारण की गई थी एक उम्मी सेवाओं की आवश्यकता न देंदों के लिए। प्रार्थी ने यह दाता है कि उस दुरुगतरण के बारे में न तो श्री यादव को कोई आरोप पवर दिया गया और न ही आज पार्टी एवं इसलिए सेवा मुक्ति प्रादेश अनुचित एवं अवैध है। प्रगत बास्तव में प्रार्थी को श्री यादव की सेवाओं की आवश्यकता नहीं थी तो उग सप्त कांगड़ा कलिङ्गपम आंच मैनेजर की सेवा मुक्ति करना आवश्यक था परन्तु जूनिपर श्रमिक को सेवा में रखने हुए श्री यादव जैसे नरिल्ल श्रमिक को सेवा मुक्ति करने से यही निलंबन लिकाया है कि बास्तव में दुरुवरण के कारण ही सेवा मुक्ति दिया गया है। तांत्र और के प्राप्तार में सेवा मुक्ति के उपरांत प्रार्थी द्वारा श्री यादव मैनेजर के पद की नई भर्ती भी कर ली गई है और इस प्रबाल औद्योगिक रियर प्रोप्रेंटरम की धारा 25-श्री व एव फा भी उल्लंघन हिला है। प्रार्थी मंत्र के प्राप्तार निगमाल्लासार श्री यादव को राजुता 1 ग्रा 115 रा 05 वेन दिना औद्योगिता जबकि एड मैन का ही नोटिस जैसा दिया गया है। सेवा मुक्ति प्रार्थी के दिन श्री यादव 1 वर्ष 10 मैडर का अपील भी कर थी जो मिना मधुनिका फारग वज्रे रद्द कर दी गई। प्रार्थी संघ की प्रार्थना है कि श्री यादव को औद्योगिक दिवाव मंत्रितार के अंतर्गत श्रमिक घोषित हो द्वारा दिनांक 12-12-85 से को गई सेवा मुक्ति प्राप्ति एवं अवैध थापन कर दी जावे और उसे संवेत संचाल मैनेजर के पद पर नियुक्त दिया जाये।

4 प्रार्थी ने जिए प्रयुनर कोने के नवार्तनों को अस्वीकार यरते हुए कहा है कि थी आर डो यार नियुक्ति के तमन अविकारी के रूप मे नियुक्त हुए थे। उन्होंने डू माह का प्रशिक्षण प्राप्त कर गम्भुरा शाक्ता मे ब्राच मैनेजर को हिपेटर से कैफी प्रारम किया था। उसकी प्रथम नियुक्ति दो थार्थ के परिवीक्षा कान के लिए को गई थी और नियुक्ति आदेश मे ही परिवीक्षा अवधि मे सेवा समाप्ति का स्पष्ट वर्णन किया गया था व बैंक के (हर्चारो बृह) के नियम, 1985 के अध्याय 2 के विनियम 8 का धारा 3(क) के अतर्पत ते सेवा भुक्त किए जाने योग्य थे। उक्त सेवा गती के अनुसार ही 10-12-85 के आरेस से एक भाह का नोटिस विन बैंकर श्री यादव को सेवा भुक्त किया गया था। अर्थात् का यह भी कहता है कि श्री आर.डी. यादव को ब्रांच मैनेजर की हैसियत से वे सभी कार्य करने होते थे जो इयटी चार्ट मे वर्णित किये गये हैं। प्रार्थी ने इयटी चार्ट मे से कुछ कार्यों को ही अपनी इयटी भरता है जो सभ्याओं के विपरीत है। श्री यादव पूर्ण रूप से ब्रांच मैनेजर की हैसियत से कार्य करते थे, उन्हे सभी मैनेजरीय शक्तियां प्रदत्त थीं और वे अपना निर्णय लेन के लिए ब्रांच मैनेजर की हैसियत से उत्तम थे। गम्भुरा शाक्ता मे प्रबन्धकों को हैसियत से श्री यादव को अपने अधीनी कार्यरस सभी कर्मचारियां के थार्थ पर नियन्त्रण करने के

कार्य करना होता था। उन्हें अपनी जाता में अंगकालीन दैनिक बेतन भी कर्मचारियों के नियुक्ति का अधिकार था और उन्होंने अपने कार्यकाल में दैनिक बेतन भी गोपनीय कर्मचारियों की नियुक्तियाँ भी की थी तथा उनको बेतन का भुगतान भी किया था। इसके अलावा श्री यादव को बैंक की याजना के अनुपार आनंदिकारियों को तथा अन्य सौंदर्यों को भी ग्राहित की गयी थी। स्थीकृति प्रदान कर रहा बितरण करने का भी अधिकार था जो कार्य श्री यादव ने किये थे हैं, इस हेतु श्री यादव ने अपने स्वीकृति के साथ साथ उनके रीयेमेट के संबंध में शर्तें भी तय की थीं। वे स्वयं बैंक का समर्पण कैंग ईंडिन करने के संबंध में निर्णय लेने को स्वतंत्र थे। शाश्वा के जो दैनिक खर्च होते थे उनकी स्वीकृति भी स्वयं श्री यादव ही करते थे। बैंक के विकास के संबंध में समय-समय पर प्रार्थी को निर्णय लेने का अधिकार था। वे शाश्वा में अनुशासन रखने के भी अधिकारी थे तथा अपने अधीन कर्मचारियों से साझीकरण आदि मानने के अधिकार भी उन्हे प्रदत्त थे तथा अधीनस्थ श्रमिकों को शो-काऊ नोटिस आदि देने के लिए भी उन्हे अधिकार प्रदान थे। शाश्वा की ओर से दावा करने और विधि अनुसार नोटिस आदि देने के लिए भी उन्हे अधिकारी प्रदान थी। वे अपने अधीन कर्मचारियों को ड्रग्टी वितरण करने थे और उनसे काम लेते थे तथा वे शाश्वा के मकान अधिकारी थे। इसलिए औद्योगिक विवाद अधिनियम 1947 की धारा 2(एस) के अन्तर्दृष्ट श्री यादव कर्मचारी की परिमाण में नहीं आते हैं और इस बाब की सुनिदाई का आधार क्षेत्र भी इस न्यायालय को नहीं है।

5. अप्रार्थी यह मीं कहते हैं कि श्री यादव कर्तृतीकल अपवा मैनुअल कार्य नहीं करते थे, उसका कार्य करने के लिए श्री यादव के अधीन रोकड़ियाँ-लिपिक कार्यरत था और श्री यादव ने अंशकालीन दैनिक बेतन भी गोपनीय कर्मचारियों की भी नियुक्ति कर रखी थी। इसलिए भी अरा 2 (एस) के अनुसार वे कर्मकार नहीं थे।

6. अप्रार्थी के अनुसार श्री यादव को सेवा मुक्त करने समय किसी प्रिस्म का आरोप पत्र नहीं दिया गया न ही मेवा मुक्ति आदेश में आरोपों का वर्णन किया गया। श्री यादव की सेवाएँ परिवेश पर भी और एक माह के नोटिस द्वारा नियुक्ति पत्र एवं सेवा गतों के अनुसार समाप्त की गई थीं। श्री यादव ने अप्रार्थी के बाहर कुल 189 विवास ही कार्य किया है तथा वह कर्मकार नहीं है इसलिए धारा 25-शी व एच की पालसा करना आवश्यक नहीं था। श्री यादव जीन माह के नंदिस बेतन के अधिकारी भी नहीं हैं व्यक्ति वह परिवेश पर थे। बैंक के सेवा नियमों के प्रारंभिक 3 माह के नोटिस बेतन का प्रावधान स्पाई कर्मचारियों के लिए है। श्री यादव द्वारा प्रस्तुत भी गई अपील संचालक मण्डल द्वारा पुण्य: अध्ययन करने के पश्चात आधारहीन मानते हुए आर्जि की गई है। इसलिए श्री यादव किसी अनुमोद के अधिकारों मही है।

7. अपने वर्थनों के समर्थन में श्री राम द्वाल यादव ने स्वयं का शपथ पत्र पेश किया है जिससे नियोजक प्रतिनिधि ने जिरह की है। प्रालेखिक साक्ष्य में डब्ल्यू-१ लगायत डब्ल्यू-४ फॉटो प्रिंटियों पेश की है। इसके विपरीत नियोजक की तरफ ने सर्वत्र शार. ए. नियानिया तथा अनिल कुमार शर्मा के शपथ पत्र पेश हुए हैं जिनमें रोंद के प्रतिनिधि ने जिरह की है। प्रालेखिक साक्षर में एम-१ लगायत एम-१२ फॉटो प्रिंटियों पेश की गई हैं। बूंदी चिरौँड ब्लैक प्रामोन बैंक सेवा नियम का प्रति भी पेश की गई है। तत्प्रवाह में पदावली का प्रधान किया और प्रधान कारों के प्रतिनिधियों को विस्तारपूर्वक सुना।

8. पक्षकारों में मुख्य विवाद यही है कि क्या श्रमिक श्री गम द्वाल यादव औद्योगिक विवाद अधिनियम 1947 की धारा 2 (एस) के प्रस्तावने कर्मकार की परिभासा में आता है। यथेत में ही प्रार्थी संघ ने यह उल्लेख किया है कि श्री यादव की नियुक्ति प्रधिकारी के पद पर हुई

थी, उनका स्थानान्तरण अस्थिर हाथा पर भाष भीनेजर के पद पर किया गया था। शाश्वा प्रबंधक का ड्यूटी चार्ट अनैक्सचर-७ है और नियुक्ति आदेश अनैक्सचर-१ है। संघ का क्षय यह है कि ड्यूटी चार्ट में क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) (xix) व (xxiv) में उल्लिखित कार्य करने का अधिकार श्री यादव को नहीं था और न ही उन्होंने ये कार्य किए। उपरोक्त तथ्यों को अप्रार्थी ने अधीकार किया है और कहा है कि ड्यूटी चार्ट अनैक्सचर। के अनुसार श्री यादव को सभी कार्य करने का स्वतंत्र प्रधिकार था। फिर भी श्री यादव ने उन सो रिजोइटर द्वारा यह स्पष्ट किया कि ड्यूटी चार्ट अनैक्सचर-७ की क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) (xix) (xxiv) में उल्लिखित कार्य करने का श्री यादव को अधिकार किस प्रकार नहीं था, न ही श्री यादव ने अपने शपथ पत्र में उक्त विषय का स्वाक्षरण किया। यहां तक कि नियोजक साक्षी सर्वत्र सिविलिया व भ्रनिल कुमार शर्मा से भी इस विषय में सुनावासमक प्रति परीक्षा नहीं थी। श्री यादव से अपेक्षा भी कि वे अनैक्सचर-७ ड्यूटी चार्ट में दर्ज क्रम सं. 2 के (x) (xi) (xiv) (xvii) (xviii) व (xxiv) पर उल्लिखित कार्य करने के अधिकार उससे विषयकी बैंक ने कव और किस प्रादेश द्वारा भी लिए थे। इसके अधार में यह निकर्ष निकलता है कि संभवतः श्री यादव के प्रतिनिधि ने ड्यूटी चार्ट अनैक्सचर-७ का देखने के बावजूद क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) (xix) (xxiv) के अधिकार नहीं होने वायत इसलिए उल्लेख किया कि इन अधिकारों से तो श्री यादव औद्योगिक विवाद अधिनियम की धारा 2 (एस) के प्रस्तावने कर्मकार की परिभासा में नहीं आये। अनैक्सचर-७ की क्रम सं. 2(x) (xi) (xiv) (xvii) (xviii) (xix) (xxiv) पर नियुक्ति प्रधिकारी शाश्वा प्रबंधक की दिए गए थे।

"To have proper and complete check on expenditure, to check and pass the expenditure bills as per rules, to review the working of the bank including the developmental aspect at periodical intervals and keep head office informed of the progress, to maintain discipline at the branch and observe and comply with the rules, regulations, procedure instructions in regard to all matters including those relating to staff as framed and/or issued by head office from time to time, to issue memos and show cause notices, to any member of the staff in terms of the powers vested in him by bank, to serve legal notices, file, suit, obtain and execute decrees, take necessary steps to initiate continue and terminate necessary steps to initiate continue and terminate in terms of the powers vested in him by the bank, to utilise the services of staff posted under him to the optimum and kept control on staff/furniture, fixture/equipments/stationary and other affairs of branch."

हानाकि क्लैम के अनुसार अपने शपथ पत्र में तो श्री यादव ने यह दर्ज कर दिया कि ड्यूटी चार्ट अनैक्सचर-७ में दर्ज उपरोक्त कार्य करने के अधिकार उसे नहीं थे और न ही उन्होंने उक्त कार्य करनी किए थे परन्तु प्रति परीक्षा करने पर श्री यादव स्वीकार करते हैं कि यह तीक है कि प्रदर्श एम-४ लगायत एम-१२ में विधि औप्यास लेवर को भुगतान देने किया था इन अधिनियों के न.रे में विधरमैन साहब के भावेश से नहीं आए थे। लक्षण्यात श्री यादव यह भी स्वीकार करते हैं कि वह बैंक के भुगतान के निए पालिंग आशोरिटी से और उन्होंने एम-१३ व १४ को बतौर पालिंग आशोरिटी के पास किया है। एम-१५ व १६ लोन थोटे आयारियों को किया है। इन प्रति प्रधार नार्नियर की स्थीकृति नहीं है इस पर तो द्वारा स्वीकृति होती है लोन दिस्त्रैर करने की। तत्प्रवाह श्री यादव स्वीकार करते हैं कि एम-१५ व १६ ह्यारे पास ही रहते हैं ये हैं द्वारा आकीस नहीं आते, इन कामों पर लोन स्वीकृत करने की मेरी स्थीकृति है। एम-१७ व एम-१९ पर ए दू बी मेरे हस्ताक्षर हैं। श्री यादव ने यह भी स्वीकार किया कि उनका 3,000 लाए तक लोन स्वीकृत करने का प्रधिकार दिया दूषा था। लक्षण्यात श्री नियोजक प्रतिनिधि के सुनावासमक

प्रश्न पर श्री यादव ने स्वीकार किया है कि एप्रिल-मेट एम-20 लगायत एम-24 पर ए दृ बी मैनेजर बी हैसियत से उर्हों के वस्ताव्य हैं। एम-20, 21 व 22 के खाना नं. 5 में श्री यादव द्वारा ही राशि स्वीकृत की गई है। श्री यादव का कहना है कि उसने प्रश्नान कार्यालय की स्वीकृति मिलने पर एम-20 लगायत एम-22 की एडवान्स स्वीकृति दी थी परन्तु नथाक्षित खेत्रकृति प्रश्नान कार्यालय से आने वाला न सो नियोजक साधियों ने सुझावात्मक प्रति परीक्षा की है और न ही ऐसी किसी स्वीकृति बी प्रति पेश की गई है। अगर खास्तव में श्री यादव के कथनों में सत्यता होती तो नथाक्षित स्वीकृति के आदेश की प्रति पेश करवाने हेतु इस व्यापालय में प्रार्थना पढ़ पेश करने। श्री यादव स्वीकार कहते हैं कि जिस शाखा में वे काम करते थे उसमें उनसे कोई उच्च अधिकारी कार्यरक मही था तथा उनके लिये एक कैशियर था। इसके अलावा श्री यादव ने प्रति परीक्षा में नियोजक प्रभिनियि के सुझावात्मक प्रमाणों को अस्वीकार किया है कि उसे शाकस्मिक व्यवकाश देने का अधिकार था तथा उसकी दैनिक वेतन पर आप्रिल-मिस्र कार्यकारियों को नियुक्ति के भी अधिकार थे। श्री यादव के उपरोक्त आपुष्ट कथनों के आधार पर यह स्वीकार नहीं किया जा सकता कि उनको इराडा आर्ड अनेकस्कर-7 में दर्ज सभी अधिकार मही हो। विषेषकर उन परिस्थितियों में जब कि श्री यादव ने प्रति परीक्षा में स्वीकार किया है कि उसने एम-8 से एम-12 में दर्ज राशि का भुगतान किया है जिस पर उसके हस्ताक्षर हैं यह उल्लेखन्य है कि एम-8 लगायत एम-12 द्वारा दैनिक वेतन पर नियोजित व्यक्तियों को वेतन का भुगतान किया गया है। अप्रार्थी के अनुसार उक्त व्यक्तियों की नियुक्ति भी श्री यादव द्वारा ही की गई थी। श्री यादव ने उक्त तथ्यों को अस्वीकार किया है क्योंकि दर्जक वेतन पर नियुक्त व्यक्तियों के नियुक्ति आदेश जारी नहीं किए जाने, सीधिक रूप से नियुक्ति दी जाती है। श्री यादव ने एम-13 व एम-14 में भी अपने हस्ताक्षर स्वीकार किया है जिसके प्रत्युमार वैकं को शम्भुपुरा शाखा में जो लेन-देन कुमा था वह श्री यादव के हस्ताक्षरों से हैं दृढ़ा था। श्री यादव ने एम-15 लगायत एम-24 पर भी अपने हस्ताक्षर स्वीकार किए हैं। प्रदर्श एम-15 श्री जे. पी. शर्मा का लोन हेतु आवेदन पत्र है जिस पर 10-9-85 को श्री यादव ने नियोजन प्रतिवेदन तैयार किया था और 2,000/- रुपए का लोन प्रदर्श एम-20 द्वारा ल्यूक्त किया गया। इसी प्रकार एम-16 श्री जे. एल. शोंको के लोन का आवेदन पत्र है जिस पर एम-19 द्वारा श्री यादव से 3,000/- रुपए का लोन स्वीकृत किया था। एक-17 व एम-18 द्वारा श्री राजेश यादव को श्री राम दयाल यादव द्वारा 1500/- रुपए का लोन स्वीकृत किया गया था। प्रदर्श एम-20 लगायत एम-22 द्वारा श्री राम दयाल यादव ने प्रश्नान कार्यालय, बूंदी की उन व्यक्तियों को सूचना भेजी थी जिनका लोन र्यूक्त किया था। एम-23 व 24 मध्यली स्टेटमेंट हैं जो हैड अक्सिस को भेजे गए हैं। डब्ल्यू-9 व 10 पर श्री धार. डी. यादव द्वारा शाखा प्रबन्धक, शम्भुपुरा की हैसियत से प्रश्नान कार्यालय, बूंदी की सूचना भेजी गई। डब्ल्यू-11 द्वारा प्रश्नान कार्यालय बूंदी में श्री धार. डी. यादव को शाखा प्रबन्धक, शम्भुपुरा की हैसियत से भागपरदाही करने के संबंध में सूचना भागा थी। डब्ल्यू-13 शम्भुपुरा शाखा की इंसपीक्यम रिपोर्ट है। उपरोक्त प्रानेविक साक्ष से भा यहा निकार्य निकलता है कि श्री धार. डी. यादव को खास्तव में अप्रार्थी वैकं की शम्भुपुरा शाखा के प्रबन्धक के सभ अधिकारी प्रदर्श है।

9. प्रार्थी संघ की अर्जी दिनांक 3-1-91 पर 7-3-91 को प्रार्थी संघ द्वारा प्रस्तुत 10 प्रवेशों का पेश करने का अनुमति दा था जिनमें से 5-11-85 का भी एक पत्र प्रार्थी द्वारा श्री राम द्वारा यादव को लिखा गया था जिसकी फोटो प्रति पेश है जो प्रार्थी के प्रतिनिधि द्वारा एक्सिट की हुई है, इस पत्र में भी श्री यादव का शाखा प्रबन्धक, शमशुरा को ही संबोधित किया गया है और इसके द्वारा अप्रार्थी ने श्री यादव को निर्देश दिये थे कि प्रधान कायानिय के पश्च कामोंक एवं ओ./सो./मार्ई. यार./ 84-1/1 दिनांक 12-7-84 द्वारा प्रवत अरण प्रदान करने के प्रधिकारों का उपर्युक्त हुरंत्र प्रधान से बद कर देने और प्रपता शाखा के निरीक्षण के दौरान पार्टी गई अनियमितताओं का पहले सुधार करेंगे। इस

मध्य यदि व्यण स्वीकृति हेतु कोई भावेन पत्र प्राप्त हो तो उन्हें प्रश्ना कार्यालय को स्वीकृति हेतु अपनी सिफारिशों सहित प्र-तु फरंदे । 5-11-85 के उक्त पत्र से भी यही निष्कर्ष निरापा है कि इनके पूर्व श्री यादव को सोन स्वीकृत करने के स्वतंत्र अधिकार ये हृषीकेर श्री यादव प्रबन्धक की श्रेणी में आते हैं ।

10. मैंने प्रार्थी संघ द्वारा प्रस्तुत साक्ष का दूरी सर्वेत दिल्लीवासी
इसलिए किया है अपर्याप्ति प्रार्थी संघ का ही पह कथन था कि श्री यादव
की नियुक्ति जाहे प्रधिकारी के पद पर हुई थी और जाहे उसे शासनपुरा
शास्त्र के बाबू भैनेजर के पद पर पदस्थापित किया गया था। परन्तु वास्तव
में बह धारा 25 ए के अन्तर्गत कर्मकार ही था। चूंकि प्रार्थी संघ द्वारा
ही उक्त अध्यावेदन किया गया था इसलिए उसे साक्षित करने का भार भी
प्रार्थी संघ पर ही था।

11. विषयी नियोजक द्वारा प्रस्तुत साध्य का विश्लेषण निम्न प्रकार से है। क्लेम के प्रत्युत्तर को बरण सं. 3 लागत 5 में विवरकी ने यह दर्ज किया था कि श्री यादव को शास्त्रा प्रबन्धक की हैसियत से शम्भुपुरा शास्त्रा में अपने अधीन कार्यरत सभी कर्मचारियों पर नियंत्रण करता होता था, उसे अंशकालीन ईनिक वेतन भोगी कर्मचारियों की नियुक्ति का प्रधिकार था और उसने अपने कार्यकाल में अंशकालीन ईनिक वेतन भोगी कर्मचारियों की नियुक्तियां भी की थीं और उनको वेतन का भुगतान भी किया था। श्री यादव ने बैंक के शास्त्राधारियों को अपना बैंक की पीयुक्तानुसार अन्य लोगों को लोग प्राप्ति की स्वीकृति भी प्रदान की थी और परंभूतान की तर्त भी तथ की थी। इसके अलावा श्री यादव बैंक का बैश ईंविल करने के सर्वे में निर्णय लेने का स्वतंत्र प्रधिकार रखते थे, शास्त्रा के ईनिक खर्चों की स्वीकृति भी भी यादव स्वयं करते थे। उन्हें अधीनस्थ कर्मचारियों से स्पष्टीकरण प्राप्ति मांगने की शक्तियां प्रदत्त थीं, वे अपने अधीन कर्मचारियों को इन्हीं वितरित करते थे और उनसे काम लेते थे, उनके आकस्मिक अवकाश स्वीकृत करने की भी शक्तियां सेवा निवार्ता के पनुरार शास्त्रा प्रबन्धक को ही प्रदत्त थीं। शास्त्रा की तरफ से शास्त्रा कर्तुं नाइटिस प्राप्ति वेतन की शक्तियां भी शास्त्रा प्रबन्धक की ही थीं। उनक तर्थां को साक्षित करने हेतु नियोजक सभी श्री सिवानिया महाप्रबन्धक ने अपने अपने पद में दर्ज किया है कि श्री यादव की नियुक्ति प्रदर्श एम-1 द्वारा भाकिसर के पद पर की गई थी। एम-2 डिक्टेरेटर श्री यादव द्वारा दिया हुआ है। बैंक मास का प्रशिक्षण प्राप्त करने के बाव श्री यादव को शम्भुपुरा शास्त्रा में भौती प्रबन्धक नियुक्त किया गया था। श्री भौती भौती की इन्हीं प्रदर्श एम-3 में दर्ज हैं। श्री यादव को भी श्री भौती भौती को हैसियत से करने थे। उन्हें मैनेजरीरियल शक्तियां प्रदत्त थीं। शास्त्रा प्रबन्धक की हैसियत से वे अपने अधीन कार्यरत सभी कर्मचारियों पर नियंत्रण रखते थे। श्री यादव ने शम्भुपुरा शास्त्रा में अंशकालीन कर्मचारी के कर्त में सर्वश्री लातिलाल व एस.एल. सोगी को नियुक्त किया था जिन्हें भुगतान भी अपने ही अदिलों से किया था। भुगतान बाउचर एम-10 लगात 5 में एम-12 है। श्री यादव ने सर्वश्री जे.पा. लर्नी व श्रीकार लाल के आवेदन पत्रों में अमर. 2,000, व 3,000 के बायण स्वीकृति किये थे जो प्रदर्श एम-15 व एम-16 हैं। श्री वरद ने श्री श्री का पुनर्वृत्त गतान की तर्त भी तथ की थी। शास्त्रा के ईनिक खर्चों की स्वीकृति भा श्री यादव ने एम-23 व एम-24 द्वारा का है। व यादव समिति की बैठकों में भी श्री यादव बैंक को आर से प्रतिनिविद्ध करते थे। 17-8-85 के नोटिस को अनुपालन में आयोजित मॉटिंग में लिलोक 27-8-85 की एवं यादव समिति चिलोडगढ़ में श्री यादव ने बैंक की ओर से प्रतिनिविद्ध किया था श्री यादव के अधीन रोकड़िया लिपिक कार्यरत था। श्री यादव शम्भुपुरा शास्त्रा के बायर्ट प्राप्ति पेत करने के सिवे भी प्रधिकृत थे। भुगतान पासिंग पुस्तिका एम-13 व एम-14 वर्ष

श्री यादव ने पांच अधिकारी के स्वप्न में हस्ताक्षर किये हैं। द्राव नैनजर भी हैलियन से श्री यादव ने उनके द्वारा स्वीकृत पट्टांश का विवरण और के प्रधान कार्यालय का एम-20 लगायत एम-22 टार्ग भेजा है। ऐसे ही कथन श्री अनिल कुमार शर्मा प्रबन्धक अप्रार्थी वैक न भी अपने शपथ पत्र में किये हैं। हन दाना प्रबन्धक साक्षियों से विस्तारपूर्वक प्रति परीक्षा भी गई है। प्रति परीक्षा में पूछे गये किसी भी प्रश्न के उत्तर को टाप्से का किसी भी माली न प्रयाप नहीं किया है और सभी प्रश्नों का उत्तर सीधा व समाधानकारी विया है तथा कहीं पर भी विवरण नहीं हुए हैं। इनमें से किसी भी माली का श्री यादव के विश्व मिथ्या कथन करने का कार्रा द्वित या दूसरे भी प्रवर्णित नहीं होता। प्रार्थी सभ की तरफ में भी ऐसे मुमायातमय प्रश्न हन साक्षियों में प्रति परीक्षा में नहीं किये गये जिनमें इन्वा श्री यादव के विश्व कार्य मनमुठाव या वैमनस्यता प्रकट होती है। अभिप्राय यह है कि दाना माली प्रति परीक्षा की कार्रा वैक पर आरे उत्तरे हैं तथा हनके मोर्चिक कथनों की पुष्टि प्रानेक्षिक भाष्य स भी होती है जिन्हे श्री राम दयाल यादव न भी स्वीकार किया है।

12 दानो पक्षकारों दी तरफ स बहुम के दीरान कुछ न्याय दृष्टान्तो का भी उल्लेख विया गया था जिनका विवरण भी वादगत मामों के सध्यों और परिस्थितियों के सर्वर्व में करना आवश्यक है।

13 श्री काला, नियोजक प्रतिनिधि की तरफ में विमल कुमार बनाम लेखा कोटे कानपुर ए आई आर 1988 (एस मी) 384 का उल्लेख किया गया है जिसमें पिटीशनर मेन्टीनेंस विभाग में हजारियर के पद पर थे और अपने विभाग के कार्यका सुप्रबोक्त करते थे जिसे अधिकारी स्वीकृत करते और प्रत्युत्तरात्मक कार्यवाही प्रारंभ करते तथा प्रस्थाई नियुक्त करने के अधिकार थे जो भानीय उच्चतम न्यायालय के मानानुसार कर्मकार नहीं पाये गये। विवेचनाधीन विवाद में तो श्री यादव को इनसे कहीं अधिक अधिकार प्रदान थे इसलिए वे भी कर्मकार की परिभाषा में नहीं माने जा सकते। मादीहान संवित कोप्रानेटिव बैंक लि बनाम लेजर कोर्ट 1987 (71) एक जे आर 322 पर उपलब्ध करेला उच्च न्यायालय का भी श्री काला द्वारा उल्लेख किया गया है जिसमें निम्न मन व्यक्त किया गया था।

“Whether the rules governing the service of the manager of a branch of a bank show that he is immediate and near total control of the function of the branch, though under the secretary and subject to the control of the board of director and that he is the custodian of responsible for maintenance of its valuable records and had a significant part to play initiating disciplinary action against members of the staff under his control and that he had authority to sanction loans and he had practically no clerical duty, whatever clerical duties he had were only negligible, all these are clear indications that the duties and functions were mostly managerial or administrative taking him out of the designation of workman of S 2(1) of the Industrial Dispute Act, 1947”

विवेचनाधीन विवाद की तरह इस शाखा प्रबन्धक के अधीन सी एक कलंक कम केशियर था उक्त अधिनियम का शाखा प्रबन्धक उक्त शाखा में वरिष्ठनम व्यक्त नहीं था जबकि श्री यादव शास्त्रपुरा शाखा में वरिष्ठनम अधिकारी थे। इसलिए इस न्याय दृष्टान्त के अनुमार भी श्री यादव को जो अधिकार प्रदान थे उनके अनुमार वह प्रबन्धक की श्रेणी में ही आते हैं न कि कर्मकार वी। अपर्णा कुमार बनाम यूटीलिटी इंस्ट्रियल बैंक 1979 लेख आई मी 506 पर उपलब्ध कलकत्ता उच्च न्यायालय के न्याय दृष्टान्त का भी श्री काला द्वारा उल्लेख किया गया है जो भी बैंक के शाखा प्रबन्धक के अधिकारों में सम्बिन था और उच्च शाखा प्रबन्धक ने भी यह स्वीकार किया था वि ड्यूटी चार्ट में अकित अधिकार उसे प्रदान थे। फास्ट्वर्क माननीय उच्च न्यायालय द्वारा निम्न मन व्यक्त किया गया

“In his evidence the plaintiff admitted that he was enjoying all the power and privileges which were vested in all other branch managers. The plaintiff was exercising all managerial powers vested in him. On account of the nature of duties attached to the post of a manager, the plaintiff could not come under the definition of ‘workman’ as given in the Act”

कर्नाटका उच्च न्यायालय के न्याय दृष्टान्त मी छन्त्या बनाम लेजर कार्ट 1991 (63) एक एस आर 80 के न्याय दृष्टान्त में भी फर्म के प्रबन्धक को प्रदान अधिकारों से सबधित विवाद था। माननीय न्यायाधिपति के मतानुसार

“The petitioner had admitted in his evidence that he was working as a manager, the duties assigned to him was to apply for permit as the firm was dealing in some enterprises and he used to contact the commissioner of Excise to get the endorsement on permits to purchase liquor from distilleries. He was also conducting the sales and one clerk was engaged to write the accounts. He was also maintaining the day book and ledgers and he was incharge of opening the office by keeping the key with him and after the business he was responsible for closing the office by putting the lock and key.... Since the petitioner failed to prove that he was a workman as contemplated in S 2(1) of the Act this court will not interfere with the order passed by the Labour Court”

विवेचनाधीन विवाद में भी श्री यादव के प्रधीन एक रोकहिया कार्यगत था जो कैश बुक व लेजर आवि वा कार्य करना था श्री यादव ने कभी भी शाखा की कैश बुक या लैंगर में प्रतिष्ठित्या नहीं की, न ही कभी शाखा कार्यालय आता थोता या अद किया जो प्रेनेक देख हुए हैं उनके अनुसार तो शाखा की कैश बुक व लेजर रोकहिया ही लिखता था और श्री यादव तो प्रतिष्ठित्यों पर अपने हस्ताक्षर करते थे। पर परिस्थितियों में उपरोक्त न्याय दृष्टान्त के अनुमार भी श्री यादव प्रबन्धक की श्रेणी में ही आते थे न कि कर्मकार की श्रेणी में मध्य प्रदेश उच्च न्यायालय के इम के जैन बनाम डिविजनल मैनेजर मी आई एस. कार्पोरेशन जबलपुर 1991(1) एम एल एन 743 के न्याय दृष्टान्त में भी न तथा विवेचनाधीन विवाद के तध्यो मिलते जूलते थे। वहां पर भी पिटीशनर की नियुक्ति मैनेजर के पद पर हुई थी हाजिरी रजिस्टर में भी उसे मैनेजर ही दर्ज किया गया था जिस पर यह हस्ताक्षर करना था माननीय न्यायालय के मतानुसार

“The learned Labour Court after appreciating the evidence on record, has come to a finding that the petitioner was a manager and he was always recorded in the official record as a manager and he never objected to that position. On the attendance register also he signed on behalf of the administration. Therefore, the Labour Court was of the view that the petitioner was working in the managerial capacity to find nothing wrong with the aforesaid finding of the Labour Court”

उपरोक्त न्याय दृष्टान्त के तध्य और परिस्थितियों से मिलती जूलती थी और उपरोक्त न्याय दृष्टान्त विवेचनाधीन विवाद पर शाल प्रतिशत नालू होते हैं।

14 श्री आर सी जैन योग्य प्रतिनिधि प्रार्थी सध का तर्क यह था जब तक किसी अधिक को सेवा में नियुक्त और सेवा मूलित के अधिकार प्रदान नहीं किये जाते हैं जब तक वह प्रबन्धक की श्रेणी में नहीं आ सकता और कर्मकार ही कलनायेगा जाहे उसका पदनाम कुछ भी क्यों न हो। अपने कथनों के समर्थन में श्री जैन ने ऐसा कोई न्याय दृष्टान्त प्रस्तुत नहीं किया जिसमें यह निष्कर्ष निकलता हो कि सेवा मूलित का अधिकार प्रदान होने से ही कोई अधिक प्रबन्धक की कैटेगरी में आवेदा उसके अधाव में चाहे जिनने ही अधिकार उसे प्रदान किये गये हो वह कर्मकार ही

कहलायेगा। मानवीय उच्चतम न्यायालय ने 1965 ए. पाई आई. प्राई. एस सी. (ii) में निम्न गत व्यक्त निया है:

"When can a person be said to have been employed in a position of management ? It is difficult to laidown exhausting all the tests which can be reasonably applied. Several consideration would naturally be relevant :

1. Whether the person had power to operate bank account or could he make payments to third party and enter in to agreement with them on behalf of employer;
2. whether he was entitled to represent the employer to the world at large in regard to the dealing of the employer with strangers;
3. Did he have authority to supervise the working of the clerk employed in the establishment;
4. Did he had control and charge of correspondence;
5. Could he make commitments on behalf of the employer;
6. Could he grant leave to the members of the staff and held disciplinary proceedings against them;
7. Has he power to appoint members of the stac or punish them.

This and similar other tests may be usefully applied in determining the question of the status of an employee."

तत्पस्थात ए. आई. प्रार. 1967 (एस. सी. 678 तथा ए. प्राई. आर 1971 एस सी 982) के न्याय दृष्टान्तों में निम्न मत व्यक्त किया गया:

"The principle is now well settled that workman must be held to be employed to do that work which is not the main work he is required to do. Even though he may be incidentally doing other type of work. There can be no quarrel with the preposition that if the main duties of an employee are only supervisory in nature then certainly he could not be excluded from the category nor can he be deprived of the benefits even though for a short period he is required to discharge additional or incidental function."

उपरोक्त न्याय दृष्टान्तों में व्यक्त किये गये मतानुसार भी मैंने श्री यादव को प्रदत्त अधिकारों का विमोचन किया है तो पाया कि अद्यती चार्ट ग्रन्थासाहर 7 के अनुसार श्री यादव को ग्रन्थासुरा शास्त्र में अपने अधीन कर्मचारियों पर नियंत्रण का अधिकार था, उसे अपने अधीनस्थ कर्मचारियों को अवकाश स्वीकृत करने का अधिकार था, उसे बैंक के नियमों के अनुसार व्यातिवाकारियों को तथा अन्य लागों को लोन आदि की स्वेच्छा प्रदान करने का अधिकार था, उसे लोन के लिए री-ऐमेंट की शर्त, शय करने का अधिकार था, अंशकालीन वैनिक वेतन भोगो अवित्तियों को नियुक्त करने का अधिकार था। उपरोक्त मस्ती कार्य अपने कार्यकाल के दौरान ग्रन्थासुरा शास्त्र में श्री यादव ने किये थी है। श्री यादव की नियुक्ति 7-6-85 को हुई थी और 12-12-85 को उनको सेवा मुक्त कर दिया गया इसलिए करीब 6 माह ही वे शास्त्र प्रबन्धक नियुक्त रहे हैं और उनके अधिकार में विस्तीर्ण अधीनस्थ कर्मचारी को कारण बताओ नहिं देने या उनके विलक्षण ग्रन्थासाहिक कार्यवाही करने का कोई अवसर ही नहीं आया, इससे यह नियर्कर्ण नहीं निकाला जा सकता कि श्री यादव को अपने अधीनस्थ कर्मचारियों के विकाश ग्रन्थासाहिक कार्यवाही करने का अधिकार ही न हो। प्रत्येक श्री जैन संघ के प्रतिनिधि यी गह प्रथम आपत्ति निराधार मानते हुए ग्राहक भी जाती है।

15. श्री जैन, संघ प्रतिनिधि ने पूछ न्याय दृष्टान्तों को भी वहस के दोगम प्रस्तुत कर यह प्रकट करने का प्रयास किया था कि श्री यादव को जो अधिकार प्रवर्त्त थे उससे तो वह कर्मसार की ही श्रेणी में आता है। इस विषय में श्री जैन ने उच्चतम न्यायालय के न्याय दृष्टान्त छी. पी. माहेश्वरी बनाम देहनी प्रशासन 1983 (60) एफ. जे. आर. 333 का उल्लेख किया जिसमें श्री माहेश्वरी ग्रामाउडम आफीसर या आफीमर आन स्पेशल इम्प्री अधिकारी स्टोर पर्चेंज आफीसर के पद पर नियुक्त थे परन्तु पद नाम मात्र से ही श्री माहेश्वरी को प्रबंधक की श्रेणी में नहा रखा गया और अम न्यायालय के मामां जो प्रानेश्विक व भौतिक मादर आई उससे यह नियर्कर्ण निकाला कि वास्तव में जो अधिकार श्री माहेश्वरी को प्रवर्त्त किये गये थे वे तो वह कर्मसार कार्य से संबंधित थे जैसे ड्रापट टैयार करना, रजिस्टर टैयार करना और अपने बरिष्ट अधिकारियों व अधिकारियों में मार्ग दर्शन प्राप्त करना और इन परिस्थितियों में श्री माहेश्वरी को धारा 2 (एस) के अन्तर्गत कार्यकार पाया गया। श्री जैन की वरक से उच्चतम न्यायालय के एक और न्याय दृष्टान्त वेद प्रकाश गप्ता बनाम ईंटरन नेबिल इंडिया 1984 (64) एफ. जे. आर. 433 का भी उल्लेख किया गया है जिसमें अम न्यायालय ने प्रकाश गप्ता की नियुक्ति विषयकी फैस्ट्री में सुरक्षा अधिकारी के पद पर थी तथा उसका कार्य उसके अधीन औकी-दारों को कार्य पर लगाना था तथा बाल एंड बाई पर भेजना था और अगर फैस्ट्री में कोई विजिटर आये तो उनके साथ आना था एवं फैस्ट्री के रजिस्टर में आने वाले विजिटर व माल का उल्लेख करना था। श्री वेद प्रकाश गप्ता को न तो किसी की नियुक्ति का अधिकार था और न ही किसी की भेदवा मुक्ति का अधिकार प्रशुशासनिक कार्यवाही प्रारम्भ करने का और उपरोक्त परिस्थितियों में श्री गप्ता को सौंपे गये कर्तव्य प्रबंधक की अधिकारी पर्यवेक्षीय श्रेणी में नहीं पाये गये। इकल गोविन्द राज राव बनाम नीबा गायजी आर इंडिया लि. बास्टे 1985 (67) एफ.जे.आर 102 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का भी उल्लेख श्री जैन द्वारा किया गया है। उक्त न्याय दृष्टान्त में श्री इकल गोविन्द राज राव का पद नाम तो सुप लीडर था और उसके अधीनस्थ कार्य करने वालों का सुपरवाईजर भी उसे करना पड़ता था परन्तु उसका सुप्रक्षेप्ता वैक री-ग्रन्सीलियेशन स्टेटेंट टैयार करना था इसलिए भानानीय उच्चतम न्यायालय के भानानुसार उसका कार्य प्रबन्धक अधिकार परिवेक्षक श्रेणी का नहीं था और धारा 2 (एस) के अन्तर्गत वह कर्मसार पाया गया। नेशनल इंजीनियरिंग इंस्टीट्यूट बनाम श्री श्रीकिशन बगरिया 1988 एस.सी.सी. 428 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का भी सहारा श्री जैन द्वारा लिया गया है जिसमें श्री विवेकिंग बत्कर्क का था और प्रबंधकों को रिपोर्ट करने का था इसलिए उक्त न्याय दृष्टान्त के विषय तथ्यों और परिस्थितियों के संदर्भ में उसे सुपरवाईजर की श्रेणी में नहीं पाया गया। उपरोक्त सभी न्याय दृष्टान्तों के सथ्य और परिस्थितियों विवेचनाधीन विवाद के नस्थों और परिस्थितियों से मिलते जल्दी नहीं थे इसलिए उक्त न्याय दृष्टान्तों से श्री यादव को कोई लाभ नहीं लिया जा सकता। उपरोक्त न्याय दृष्टान्तों में प्रतिपादित सिद्धान्तों के प्रत्युप स्थी भी मैंने इस विवाद में प्रस्तुत भौतिक व प्रानेश्विक साक्ष्य का विवेचन करने हुए ही यह नियर्कर्ण निकाला है ति श्री यादव के अल्प कार्य एवं दायित्व प्रबंधकीय एवं पर्यवेक्षकीय श्रेणी के थे न कि विनिस्ट्रीयल और वेरीकल श्रेणी के। श्री जैन योग्य प्रतिनिधि संघ की तरफ से राजस्थान उच्च न्यायालय के न्याय दृष्टान्त फूलध बनाम राजस्थान राज्य 1985 आर. एल. आर. 365 का सहारा लिया गया है जिसमें कृषि अनुवादी सहकारी समितियों के व्यवस्थापकों के बाबत विवाद था। वियोजक के अनुभार उपरोक्त व्यवस्थापक प्रबन्धकीय श्रेणी में आते थे तथा वे ही साक्षात्कारों के प्रभारी अधिकारी थे परन्तु कृषि वसूली के अधिकार इन व्यवस्थापकों की बाजाय अधिकारी सहकारी अधिकारियों को थे। समिति के व्यवस्थापकों को तो पेर्सेंट नीटिम आरी करने का ही अधिकार था। उक्त नीटिम के उपरान्त भी अगर कोई सदस्य कृषि जमा नहीं करता था तो उक्त व्यवस्थापक मामले को अधिकारी सहकारी अधिकार महायक रजिस्टर को पठा देते थे। समिति के व्यवस्थापक का पद तो क्या विक्रय सहकारी संस्थान में सबसे कनिष्ठ दर्जे का था और उस्से

मुख्य श्रेणी कर्मचारी के बेतन के जितना ही बेतन 250 रुपये प्रति माह मिलता था और उनकी हैमियत लोन रिकवरी क्लर्क अधिकारी कैशियर से अधिक की नहीं थी और इन परिस्थितियों में माननीय उच्च व्यापारिय ने कृषि उत्पादकी सहायता समिति के व्यवस्थापकों को प्रबलधीय अधिकारी पर्यवेक्षकीय श्रेणी में नहीं पाया और धारा 2 (एम) के अन्तर्गत कर्मकार की श्रेणी में परिभावित किया गया। विवेचनाधीन विवाद में तो भीखिक व प्रालैंबिक साक्ष्य अधिसेक पर उपलब्ध हुई है उससे तो श्री राम व्यापार याचक को बैक की शम्भुपुरा शास्त्र के प्रबलक की हैमियत से अपने ग्राहीतस्य कर्मचारियों के कार्य पर नियन्त्रण करने, उनका आकरिक अवकाश स्वीकृत करने, अशकानीन दैनिक बेतन भीषी कर्मचारियों की नियुक्ति करने, उनको बेतन का भुगतान करने, बैक के खाताधारियों अधिक लागों को 3000 रुपये की राशि तक का लोन स्वीकृत करने एवं उसके री-ऐमेंट की शर्ते तय करने, शास्त्र का कैश हैंडिल करने भावित के अधिकार प्रबलत ये जिनका उभने प्रयोग मी किया था हमालए मेरी गय में श्री याचक के मुख्य कार्य एवं वापिल डूटी चार्ट अन्तर्सचर 7 के अनुग्राह होने से वह प्रबलधीकीय एवं पर्यवेक्षकीय श्रेणी में प्राप्त थे और धारा 2 (एम) के अन्तर्गत कर्मकार की श्रेणी में उसे नहीं पाया जाया।

16 श्री जैन सप्त के योग्य प्रतिनिधि का एक तर्क यह थी था कि 5-11-85 के पत्र द्वारा अप्रार्थी ने श्री यादव की अहं वितरण करने के प्रधिकारों का उपयोग ब्रव कर दिया इमलिए, 5-11-85 के उपरांत सा वह प्रबन्धकीय श्रेणी में माना ही नहीं जा सकता। यह सही है कि 5-11-85 के पत्र द्वारा श्री यादव औं अहं प्रवान करने के प्रधिकारों का उपयोग बन्द करने के प्रादेश दिये गये थे परन्तु मेरी गति में उक। आदेश से यह निष्कर्ष नहीं निकलता कि 5-11-85 के उपरांत श्री यादव प्रबन्धकीय श्रेणी में नहीं रखे जा सकते हो क्योंकि 5-11-85 के पत्र में यह उल्लेख है कि निरीक्षण में दौगान पाई गई अनियमिताओं पर मुधार किये विना श्री यादव नये अहं स्वीकृत नहीं करेंगे तथा इस दौराद प्रगर कोई अहं देव आवेदन प्राप्त होता है तो उसे अपनी सिकारियों सहित प्रधान कार्यालय को पठायेंगे। मेरी गति में 5-11-85 का पत्र तो इस उद्देश्य से जारी किया गया था कि निरीक्षण प्रतिवेदन में जो अनियमिताएं पाई गई थीं उनका मुधार करने का प्रयास श्री यादव से किया गया था। तर्क के लिए यह मान भी निया जाये कि 5-11-85 के पत्र द्वारा अहं स्वीकृत करने के प्रधिकार श्री यादव से छीन लिये गये थे तो भी उमसे यह निष्कर्ष नहीं निकलता कि वे कर्मकारी की श्रेणी में आ जायेंगे क्योंकि इसके उपरांत श्री यादव को शम्भुपुरा शाला में अपने प्रधीन कार्यालय कर्मचारियों के कार्यों पर नियन्त्रण का प्रधिकार आरी था, शाला में अशकालीन दैनिक वेतन भागी कर्मचारियों की नियुक्ति का प्रधिकार भी था और उनके वेतन के भुगतान का भी प्रधिकार था, उनके प्रब्रकाण स्वीकृत करने व शाला के दैनिक खर्च करने का भी प्रधिकार प्राप्त था। यह उल्लेख नीय है कि न तो अपने कलेम में श्री यादव ने दर्ज किया और न ही अपने शपथ पत्र में कि उसने कभी भी शम्भुपुरा शाला में किसी प्रकार का कलेरीकल कार्य किया हो, रजिस्टर अधिकार लेजर में कही कोई प्रविष्ट की हो न ही उनक विषय का कोई प्रलेख प्रधिलेख पर पेश किया गया तक कि नियोजक साक्षीयों में भी इस विषय में प्रति परीक्षा में सुपालात्मक प्रणव नहीं किये। स्वीकृत रूप में श्री यादव के अधीन एक कलक काम कैशियर नियुक्त था ज। शाला के रजिस्टर व रोड आदि को इश्वरा जात करता था। श्री यादव के हस्ताक्षरों से ही शाला से रायि निकलदाई जा सकती थी व जमा करवाई जा सकती इस विषय में प्रश्नों एम-8 लगायत एम-14 तथा एम-23 व 24 का उल्लेख किया जा सकता है। अतएव उपरोक्त ममस्त कारणों से मेरी गति में श्री यादव धारा 2 (एम) के अन्तर्गत कर्मकारी की परिभाषा में नहीं प्राप्त है, और इन्हें प्रबन्धकीय प्रधिकार ही प्रदत्त थे।

17- तकि गुणात्मक पर भी दोनों पक्षों की प्राप्ति खिल दबे मीडिक साक्ष यमिनेश पर देश स्थो चुकी है इसलिए आठे थो गावत्र को कर्मकार नहीं पाया गया और श्री यादव पर आदीगिक विवाद प्रधानितय के प्रावधान लागू नहीं होते फिर भी गुणात्मक पर भी निर्णय करना आवश्यक

हो जाता है। क्षेत्र की चरण स 7 में ही प्रार्थी सघ ने दर्ज कर दिया था कि श्री यादेश के सेवा मुक्ति आदेश विनाक 10-12-85 में सो यह अकित किया गया था कि उसकी सेवा मुक्ति उसकी सेवाओं की प्रावधारणा नहीं होने के कारण की जाती है तथा उक्त ऐसा सेवा मुक्ति आदेश सिम्पलीसीटर टर्मिनेशन था परन्तु वास्तव में यह एक दृष्टिनीय आदेश था और दूराचरण पर आधारित था क्योंकि प्रार्थी ने आपने आदेश विनाक 4167 दिनाक 22-11-85 द्वारा वैरिकाृत में होराफेरी का गमीर आरोप श्री यादेश पर लगाया था जिसकी प्रति अनेकसचर-2 पेश की गई है और उक्ता आरोप का उत्तर भी श्री यादेश ने दिनाक 28-11-85 अनेकसचर-3 द्वारा दे दिया था। प्रार्थी नियोजक ने जरिये प्रत्युत्तर कहा है कि सेवा मुक्ति आदेश में जो वर्णन किया गया है वही देखा जा सकता है। सेवा मुक्ति आदेश किसी दूराचरण का उल्लेख नहीं किया गया और न ही सेवा मुक्ति से पूर्व कोई आरोप पत्र श्री यादेश को दिया गया है तथा उसकी सेवाओं की समर्पित तियुक्ति आदेश की शर्तों के अनुसार परिवीक्षा अवधि की एक माह का नीटिम देकर समाप्त की गई है। अभिभाव यह है कि क्षेत्र के प्रत्यन्तर में नियोजक ने यह स्पष्ट अस्वीकार नहीं किया है कि उल्लेख आदेश विनाक 22-11-85 द्वारा श्री यादेश को कारण बताओ नौटिम जारी किया हो और श्री यादेश ने अनेकसचर 3 विनाक 29-11-85 का जवाब नहीं दिया हो। बहस के दौरान नियोजक प्रतिनिधि श्री जाता भा तर्क यह था कि यह नियोजक ने अनेकसचर-2 कारण स्थानों नौटिम जारी किया हो परन्तु तस्वीरात न हो श्री यादेश को कोई ग्राहण पत्र जारी किया गया तो न ही पांच कराना आवश्यक समझा गया और नियुक्ति पत्र की शर्तों के अनुसार एक माह का नौटिम देकर परिवीक्षा काल में ही उसकी सेवाएं समाप्त कर दी गई। हमसिंग यह स्थायालय सेवा मुक्ति आदेश में वर्णित तथ्यों को ही वेद्य सकता है न कि इसके पूर्व में जारी किये गये कारण बताओ नौटिम अनेकसचर-2 का। इस विषय में अनुप्रयोग जाप्तस्वाल बनाम भारत सरकार 1984 (1) एन एन 479, नेपालसिंह बनाम उत्तर प्रदेश राज्य 1986 (1) एल एन एन 683, जर्वेल सिंह बनाम पजाब राज्य, 1986 (2) एल. एल 364, ओम प्रकाश गोपल बनाम एवं पी ट्रिज्म लिपार्ट्सेट 1991 (2) एल एल एन 420 पर उपलब्ध उच्चतम स्थायालय के न्याय दृष्टान्तों का तथा चिल्डरैन अकैरमी बनाम श्रीमति ऊषा 1992 (1) सी. एल. प्रार 422 पर उपलब्ध बास्त्रे उच्च स्थायालय के न्याय दृष्टान्त का उल्लेख किया जा राकता है जिनके अनुसार यह प्रबन्धक ने विष्पलीसीटर डिस्कार्ड या टर्मिनेशन किया हो, स्थायालय को यह अधिकार दिया है कि वह पवे के पीछे होने वाली कार्यवाही तथा आदेश जारी करने हेतु नियोजक की मनावशा का आकलन कर सकता है और भागर वास्तव में दूराचरण के कारण ही नियोजक ने विष्पलीसीटर टर्मिनेशन आदेश दिया है तो स्थायालय उस दूराचरण पर आधारित मानते हुए आवश्यक आदेश पारिन कर सकता है। मैंने भी विवेचनाधीन विवाद में पारित सेवा मुक्ति आदेश विनाक 10-12-85 का विश्लेषण किया तो पाया कि 21-11-85 को प्रादेश विनाक 4167 द्वारा प्रार्थी ने श्री यादेश को कारण बताओ नौटिम जारी किया कि सेविंग थैक प्रकाउट नं 114 में, जो श्री यादेश का स्वयं का था, दिनाक 5-8-85 का 30- रुपये का विध्वावल किया जिस पर श्री यादेश ने कुमारी श्रनिता खोल्मा कैशियर-कम-फ्लर्क के तृतीक्षक स्वयं नेक्टरिक्षन (फोर्ज) किया। 2-8-85 के हाइजीर रजिस्टर में भी कुमारी श्रनिता खोल्मा की उपस्थिति के नयु हस्ताक्षर भी स्वयं श्री यादेश ने कर दिये यहां तक कि 30 रुपये का जो विध्वावल किया था उसका मूल फार्म भी नष्ट कर दिया। श्री यादेश से उक्त दूराचरण बाबत तीन विवाद में स्पष्टीकरण चाहा गया था कि क्यों नहीं अनुसासनिक कार्यवाही की जाये। श्री यादेश न 28-11-85 को अनेकसचर 3 उत्तर भी दे दिया था और उसके तुरन्त उपरान्त विनाक 10-12-85 के आदेश द्वारा श्री यादेश भी सेवाएं समाप्त कर दी। परन्तु फिर भी सेवा मुक्ति आदेश में दूराचरण का उल्लेख नहीं किया जिससे ग्रही निकलता है कि वास्तव में दूराचरण वा कार्ड लाल्हन लगाकर सेवा मुक्ति माहों की गई है और सेवा मुक्ति आदेश मिट्टारीटिक नहीं है। माय इसलिए कि सेवा मुक्ति आदेश पारिन करने के पूर्व श्री यादेश का कारण बताओ नौटिम जारी

गया और इसका स्पष्टीकरण मांगा गया तथा उक्त कारण बताये गये और इसका स्पष्टीकरण मांगा गया तथा उक्त कारण बताये गये और वार्तावार पर हस्ताक्षर कृत रचित करने और हाजिरी रजिस्टर में लघु हस्ताक्षर फूट रचित करने का उल्लेख कर दिया, इसमें यह निष्कर्ष नहीं निकाला जा सकता कि वास्तव में सेवा मुक्ति आदेश दुराचरण पर ही आधारित हो। रविन्द्र कुमार बनाम उत्तर प्रदेश राज्य हैडलूम कार्पोरेशन 1988 लैब. आई. सी. 56 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का उल्लेख इस विधय में किया जा सकता है। जिसमें भी तथ्य विवेच नारीन विवाद के तर्थों से बहुत कुछ मिलते जुलते हैं। श्री रवीन्द्र कुमार अस्थाई इटी प्रोडक्शन आफीमर पर जिसे फर्जी उत्पादन प्रविधियों करने के कारण दुराचरण के आधार पर कारण बतावी नोटिस जारी किया गया था और निलंबित कर दिया था तथा स्पष्टीकरण प्राप्त होने के उपरान्त जांच अधिकारी निष्कर्ष कर घेरेलू जांच प्रारंभ कर दी गई थी। परन्तु तत्पक्षात् जांच के निष्कर्ष की प्रतीक्षा किए बिना ही साधारण आदेश द्वारा उसको सेवा करने वालों के अनुसार एक माह का नोटिस बेतान देकर सेवा अपनाएँ समाप्त कर दी गई। सेवा मुक्ति आदेश की अपास्त करने हेतु इलाक्षावाद उच्च न्यायालय में रिट पेश की गई जहां पर असफल होने पर माननीय उच्चतम न्यायालय में सिविल अपील दायर की गई जिस पर निम्न मत व्यक्त किया गया।

"He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him, the employer had the right to terminate his services by giving him one month's notice. The order under challenge is expressly the order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit him with any level consequences. It is also not founded on misconduct. In the circumstances the order is not open to challenge."

निविवाद रूप से अनुसत्तर-2 में वर्ज दुराचरण के बाबत न तो श्री यादव को कोई आरोप पत्र जारी किया गया और न ही घेरेलू जांच करवाई गई हस्तिए बिना घेरेलू जांच करवाये भी टर्मिनेशन आदेश जारी कराया न्यायोन्नित था।

सिमलीसीटर

18. श्री काला, नियोजक के योग्य प्रतिनिधि का तर्क यह था कि श्री यादव परिवीक्षाधीन है। नियुक्ति आदेश उल्कू—1 के अनुसार उन्हें 2 वर्ष की परिवीक्षा पर 22-5-85 को नियुक्त किया गया था। परिवीक्षा अवधि में श्री यादव का कार्य मंत्रोच्चनक नहीं पाया गया हस्तिए 12-10-85 को ही उनकी सेवाएँ समाप्त कर दी गई तथा नियोजक का यह अधिकार है कि या तो वह दुराचरण के आधार पर घेरेलू जांच कराकर नियमानुसार दुराचरण पर आधारित करते हुए सेवा मुक्ति करे अथवा दुराचरण पर सेवा मुक्ति आधारित नहीं करते हुए बिना जांच कराये ही परिवीक्षा अवधि समाप्त अपने सेवा नियमों के अनुसार अथवा नियुक्ति पत्र की मर्तों के अनुसार समाप्त कर दे। अपने कर्तनों के समर्थन में श्री काला ने के, ए. बारोट बनाम गुजरात राज्य 1990 एस. सी. सी. (सप्लीमेंट) 287 के न्याय दृष्टान्त का सहारा लिया है जिसमें श्री बारोट परिवीक्षा अवधि पर नियुक्त है, उनका परिवीक्षा काल 6-6 माह के लिए तीन बार बढ़ाया गया तत्पक्षात् सेवाएँ समाप्त कर दी गई। श्री बारोट का तर्क यह था कि परिवीक्षा अवधि समाप्त होने के उपरान्त वह स्वतः ही सेवा में स्थाई हो गया, इस पर माननीय उच्चतम न्यायालय ने निम्न मत व्यक्त किया:

"It must be accepted in the facts of this case that though in the absence of a clear order of confirmation a probationer does not get the confirmed status, it is open to the appointing authority to confer a status other than that of confirmed status on the termination of probation period. In the instant case the appellant's status was temporary as indicated in the

order of appointment which stipulated termination with a month's notice. In the event of notice falling short of a month as stipulated at the most appellant would have become entitled to a month's salary in lieu of notice the principle of Section 25-F of the I.D. Act or under Section 5 of the Civil Services (Temporary Service) Rules, 1965 cannot be invoked in the facts of the present case."

विवेचनाधीन विवाद में श्री यादव को भी दो वर्ष की परिवीक्षा अवधि चल रही थी जिसके बीचारे ही नियुक्ति के 6 माह के अंश द्वारा सेवा शर्तों के अनुसार एक माह का नोटिस बेतान देकर सेवा समाप्त कर दी गई। मूलनियत कार्पोरेशन द्वारा बनाम अणोक कुमार मिश्रा 1991 (3) एस. सी. सी. 325 के न्याय दृष्टान्त में भी श्री मिश्रा की सेवा मुक्ति परिवीक्षा अवधि समाप्त होने के उपरान्त कार्यवाल देकर सेवा अपनाएँ समाप्त कर दी गई थी। श्री मिश्रा का कथन यह था कि परिवीक्षा अवधि समाप्त होने के उपरान्त उसे सेवा में स्थाई समझा जायेगा क्योंकि परिवीक्षा अवधि बढ़ाने का आवेदन नहीं किया गया। माननीय उच्चतम न्यायालय का मत यह कि:

"Mercy expiry of the initial period of probation does not automatically have the effect of being deemed confirmation and the status of a deemed confirmation on the probation. An express order in that regard only confers the status of an approved probationer. Sub-rule (2) read with sub-rule (6) of Rule 8 states that confirmation of the probationer would be made only on successful completion of the probation period and passing of the prescribed examination. It is not the respondent's case that he passed the examination, therefore, he shall be deemed to be continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar month's notice in writing and on expiry thereof the services stand terminated without any further notice. In this view the question of conducting an enquiry under the Classification, Control and Appeal rules does not arise."

विवेचनाधीन विवाद पर भी उपरोक्त न्याय दृष्टान्त गत प्रतिशत लागू होता है। यहां पर भी परिवीक्षा अवधि समाप्त होने से पहले ही नियुक्ति शर्तों तथा स्थाई आदेशों के अनुसार एक माह का नोटिस बेतान देकर सेवा समाप्त कर दी गई। कल्पीता मिह बनाम हरियाणा स्टेट हैलिंग्सिटी बोर्ड 1976 लैब आई. सी. 348 के न्याय दृष्टान्त में पंजाब एवं हरियाणा उच्च न्यायालय के अनुसार:

"In case of the petitioners the terms of employment was that their services were liable to termination by one month's notice.....The notices of discharge from service were in accordance with the conditions of service and not penal. The order of discharge is innocuous in terms and did not cast any stigma on the employees"

उक्त विवाद में अभिकों की अस्थाई सेवा एक माह का नोटिस देकर सेवा शर्तों के अनुसार हस्तिए समाप्त कर दी गई थी क्योंकि उन्होंने हृताल में भाग लिया था जिसे माननीय छण्ड पीठ ने सेवा शर्तों के अनुसार होने से उचित ठहराया। विवेचनाधीन विवाद में तो परिवीक्षा अवधि के बांगन ही सेवा शर्तों के अनुसार एक माह का नोटिस देकर श्री यादव को हटाया गया है हस्तिए उक्त न्याय दृष्टान्त इस विवाद पर भी लागू होता है। गुजरात उच्चतम न्यायालय ने भी पी. वी. आर बनाम गुजरात बाटर सप्लाई 1988 (57) एस. एस. 891 के न्याय दृष्टान्त में परिवीक्षाधीन अधिकारी के सेवाएँ परिवीक्षा काल बढ़ाने के उपरान्त समाप्त कर दी गई क्योंकि श्री यादव की सेवाएँ सतोष्ट्रद नहीं थीं जिस पर माननीय न्यायाधिपति ने निम्न मत व्यक्त किया:

"The order of appointment was that the petitioner was appointed on probation for one year. It does not indicate either expressly or by necessary implication that the period of probation will not be extended or that the petitioner will automatically be confirmed. In view of this the ratio of the decision of Supreme Court (AIR 1972 SC 873) applies on all force and hence the grievance of the petitioner that the period of probation could not have been extended is without any merit. The respondent's were entitled to extend the period of probation and it was rightly extended from time to time and the petitioner continued as probationer till the date of termination because no express order of confirmation was passed at any time. The petitioner services have been rightly terminated leading him on probation on the ground that his work was not found to be satisfactory."

विवेदवाक्षीत विवाद में निपुक्ति आवेदन में हो यह दर्ज था उपर्युक्त वार्ष को परिवीक्षा पर रखा गया है, उसके परिवीक्षा प्रमाण समाप्त होने से पूर्व ही सेवा समाप्तन को गई है जिसके पीछे नियोजक को मारांगा ना रखी था कि श्रा यावत का कार्य सतीषजनक नहीं था इनांकिं सेवा भूमित आदेश में इस विषय का उल्लेख नहीं किया गया रखाया है। उच्च न्यायालय ने भी नरपति मिठ गांधी वनाम राजस्थान राज्य 1991 (1) एन. एल. एन. १२३ के न्याय बृष्टान में परिवीक्षावान व्यक्ति की उमर का कार्य एवं व्यवहार परीक्षणके नहीं पाने से भवा मुस्ति को सेवा गर्ने के प्रत्यरूप हा। सन्धार्योत्ति ठहराया उस विवाद में श्री भाई का निपुक्ति एल. डा. ना. के पद पर प्रस्थापित रूप में 4-12-75 को की गई थी और परिवीक्षा व्यवधि में ही एक माह का नोटिस देकर 13-1-79 को सेवा समाप्त कर दी गई। श्री भाई का कथन यह था कि सेवा समाप्तने प्रादेश स्टर्गमैटिक है और अनुच्छेद 311 लागू होता है जिस पर माननाय छण्ड पाठ ने निम्न मत व्यक्त किया:

"Hon'ble Supreme Court in State of Orissa vs. Ram Narayan Das AIR 1961 (SC) 177 has considered the order of discharge of police officer on probation and held that in case of a probationer observation like unsatisfactory work and conduct would not amount stigma. The order of termination of the petitioner does not cast any stigma. When the work of a petitioner was not found satisfactory, so his services were terminated. Such an observation in the order of termination cannot be said to be an asperation or stigma on the efficiency or otherwise of the petitioner and Art. 311 would not be attracted."

विवेचनाधीन विवाद में भी उच्च स्थाय बृद्धान् गण प्रतिष्ठित लागू होता है यहाँ पर भी परिवेशी अवधि के धारान हो श्री यादव की मेवाएं भमाप्त की गई थी जाहे सेवा समाप्ति के पीछे नियोजक की ममावाण यह थी कि श्री यादव का कार्य मनोप्रभनक नहीं था परन्तु फिर भी सेवा मुक्ति आदेश में उच्च विषय का उल्लेख नहीं करते हुए सेवा समाप्त की गई है। माननिहित ब्रह्माम राजस्थान विश्वविद्यालय भी, वी मित्रिल रिट पिटोरन न. 1705/87 विनांक निर्णय 14-9-87 के फोटो प्रति पेश हुई है जिसमें मोहनसिंह की नियुक्ति विभागीयटी प्राक्षिपर के पद पर 24-8-86 को तोन माह के लिए का गई पर जिसे 6 माह की अवधि के लिए 4-8-87 तक बढ़ाया गया परन्तु 24-8-87 कीहीं सेवा मुक्त कर दिया क्योंकि सेवाओं की आवश्यकता नहीं थी। ऐसा समाप्ति के साथ ही एक माह का नोटिस बेतन भी दे दिया गया। नियोजक का कथन यह था कि श्री मोहनसिंह का कार्य मनोवजनन नहीं था। उसे अनेकों बार कार्य सुधारने बाबत कहा गया परन्तु कोई प्रगति नहीं हुई फलस्वरूप सेवा नियमों के अनुभार सेवा समाप्त कर दी गई। श्री मोहन सिंह का कथन यह था कि सेवा मुक्ति आदेश उचित ही नहीं था क्योंकि उचित जाच कराये जिना ही परिवर्तन किया गया था जबकि नियोजक का कथन यह था कि अस्थाई अधिक की सेवा मुक्ति सेवा शर्तों के अनुभार एक माह का नोटिस बेतन देवार ममाप्ति को गई है। उत्तरोक्त तथ्यों और परिस्थितियों के अन्त सार चाहे

मातृत्व मिह रु भेदा मुक्ति भेदा गर्तों के अनुसार की गई थी परन्तु चूंकि उसका भेदा अवधि २४० दिवस से अधिक थी गई थी इसलिए जो धारा ३५एक के प्रतिशतों का लाभ देता न्यायीकृत था जो नहीं दिया गया है और दुरुचरण ब्राह्मण भरेतु जात्य नहीं कराई गई इस नियम वाले भेदा नुक्ति प्रदेश इत्तायूप्रभ था भरनु किरी दुरुचरण पर अधिकृत मतों मुद्दे भेदा नुक्ति प्रदेश को इडू स्वरूप भान्ते हुए अवधास्त किया गया लेकिन किरी भी महान्तमुक्ति की भेदा में पुनर्विद्योजन का लाभ नहीं प्रिया गया व्रतिक पौराणिका रूप को गोप अवधिकृत अर्थात् २४०-४७ तक का वेतन ही दिया गया। मातृत्व राजस्थान उच्च न्यायालय की खण्ड पोल का उत्तरांश न्याय युद्धान्त जन प्रतिनिधि विवेचना-ध्रूव विवाद पर लाभ नहीं हुआ है अपेक्षित व्रवेचनालीन विवाद में तो थी यादव की ३५० दिवस की भेदा प्रवधि पूरा नहीं हुई थी और परिवर्तन का लाभ भेदा उत्तरांश प्रदेश द्वारा भेदा पूरा किया गया था इन परिविद्यिगों में वाले भेदा मुक्ति अदेश के लिए अन्तैमत्वा २१-११-४५ का कारण बनाता नाटिस द्वी रहा हो, अधिकृत से अधिकृत यह अधिकृत गोप गत्यों का लाभ भेत्र ही प्राप्त कर सकता था।

19. पर्याप्त जायसवाल बनाम भारत सरकार 1931(1) प्र. 511।
 शारण 258 के न्याय दृष्टान्त में यत्तीर्थ उच्चतम जायसवाल के द्वारा भी जो 'विवाद था उसमें परिवीभा अधिक के द्वारा श्री माधवार्ग द्वारा मुक्ति की गई थी परन्तु उक्त प्रादेश के पूर्व श्री जायसवाल व प्रब्ल व्यक्तियों को भी कारण बनाया गोटिम जारी किये गये थे और उक्ते माल्टीकरण प्राप्त होने के पश्चात् श्री जायसवाल की तो सेवा समाप्त कर दी गई और यन्ह अकिन्ता हो पैदा में बनाये रखा। उक्त सामग्रे में सविधान का अनुच्छेद 311(2) लागू पाया गया था और उक्त क्रियेप परिस्थितियों में श्री जायसवाल को सबेत सेवा में तियोंजित किया गया। विवेचनाधीन विवाद में न तो अनुच्छेद 311(2) लागू होता है और न ही श्री यादव के समान अन्य किंवद्दि जाक्षा प्रबन्धक के सिव्य दोहरा मापदण्ड अपनाया गया है।

२० १५००४० छोटवाल बनाम हिन्दुस्थान मोटर्स १९७८ एन०सी०
एस०जे० २६२ के न्याय दृष्टान्त में भी साधारण गेत्रा सुनित की गई
भी परन्तु वास्तव में यह दुरान्वरण पर आधारित भी और मानवीय
न्यायालय के मतनुमार नियोजक द्वारा पारित किये गये आदेश मैला-
फाईट अंते से चाहे वह सेवा शर्तों के बनुमार पारित किये गये थे, कायम
नहीं रखा जा सकता। परन्तु फिर भी श्री छोटवाल को पुनर्नियोजित
करने की बजाय उसे कुछ गणि ही दिलाई गई। अब उपरोक्त ममदृष्ट
कारणों में श्री आर०सी० जैन मध के प्रतिनिधि द्वारा प्रस्तुत किये गये
न्याय दृष्टान्त एवं नक्कर्तव्य के विवेचनाधीन विवाइ के तथ्यों और परिस्थितियों
के मदर्भ में लागू नहीं होते हैं।

21 श्री जैन योग्य प्रतिनिधि का एक तर्क यह था कि माननीय उच्चतम न्यायालय ने एम्स० के अप्रवाल बनाम ग्रामीण बैक 1948 एम्स० मी० मी० (एल० ए० एस०) 347 के न्याय दृष्टान्त द्वारा गुडगांथ ग्रामीण बैक स्टाक मर्गिंग रेंजूलेशन की धारा 10 (2) (ए) को भर्सर्वेंशानिक धोषित करते हुए अपास्त कर दिया जिसके प्रत्यर्गत ही सेवा मुक्ति के अधिकार प्रबल्यको को दिये गये हैं। विवेचनाधीन विवाद में भी दूसी चित्तोङ्गह क्षेत्रीय ग्रामीण बैक कर्मचारी सेवा नियम 1985 पेंग किये गये हैं उसमें भी गुडगांथ ग्रामीण बैक जैसे ही प्रावधान धारा 10 (2) (ए) में थे इसलिए भी श्री यादव की सेवा मुक्ति कायम नहीं रखी जा सकती। मैं माननीय उच्चतम न्यायालय के उपरोक्त न्याय दृष्टान्त में गार-महंगत हूँ परन्तु मेरी गय में इसमें श्री यादव का काई लाभ नहीं दिलाया जा सकता पर्योकि न तो ज्ञेय में ही उक्त तथ्यों का उल्लेख किया गया है और ना ही इस वाकत किसी प्रकार की साक्ष्य पेंग हर्दि है इसलिए नियोजक प्रतिनिधि इस विषय में अपने अध्यावेदन एवं सकं प्रस्तुत नहीं कर पाये। यह मान भी निया जाये कि उच्चतम न्यायालय के उपरोक्त न्याय दृष्टान्त के अनुसार कृदी चित्तोङ्गह क्षेत्रीय ग्रामीण बैक के सेवा नियम भी धारा 10 (2) अग्रवैधानिक है तो भी अनेकवर्त-4 दिन 10-12-85 का जो अद्यैश प्रार्थी धारा पारित किया गया है वह धारा

10(2) के अन्तर्गत जारी नहीं किया तथा अन्तिक धारा 8(3)(क) के 1 अन्तर्गत जारी किया गया है जिसके अनुसार ही परिवीक्षाधीन व्यक्तियों को परिवीक्षा काल में एक माह का नोटिस देकर या उसके बाले एक माह का बेनन देकर सेवा समाप्त की जा सकती है। धारा 10(2) के अन्तर्गत तो स्थाई कर्मचारियों को सेवा मुक्ति का ही प्रावधान है।

22. श्री जैन, योग्य प्रतिनिधि संघ का एक तर्क यह भी था कि बैंक सेवा नियमों के अन्तर्गत 3 माह का नोटिस देकर धर्यावा नोटिस के एथर में तीन माह का बेनन देकर सेवा मुक्ति का प्रावधान है जबकि श्री यादव को एक माह का ही नोटिस बेनन दिया गया है। मेरी राय में उक्त तर्क भी तथ्यों पर आधारित नहीं है क्योंकि धारा 10(2)(क) (1) के अन्तर्गत तीन माह का नोटिस देने का प्रावधान तो स्थाई श्रमिकों के लिए है। परिवीक्षाधीन श्रमिकों के लिए तो धारा 8(3)(क) ही लागू होती है जिसके अनुसार एक माह का नोटिस बेनन दिया गया था।

23. श्री जैन का एक कथन यह भी था कि धारा 25-जी व एच का उल्लंघन किया है क्योंकि सेवा मुक्ति करने समय श्री यादव से कठिनाई व्यक्ति कार्यरत थे और सेवा मुक्ति के उपरान्त नये शास्त्रा प्रबंधकों की भी नियुक्ति की गई है। यह उल्लेखनीय है कि नतों क्लेम में उन व्यक्तियों के नाम का उल्लेख है जो सेवा समाप्ति के समय शास्त्रा प्रबंधक के पद पर थे और श्री यादव से कनिष्ठ थे और न ही श्री यादव ने अपने ग्रापथ पत्र में उक्त तथ्यों का उल्लेख किया थहाँ तक कि तिशोप्रथा साथी सर्वश्री सिधानियां व अनिल कुमार शर्मा से इस विषय में प्रति परीक्षा में सुशास्त्रात्मक प्रश्न किये। श्री सिधानियां ने प्रति परीक्षा में इतना ही कहा है कि कनिष्ठतम व्यक्ति को निकालना ज़रूरी नहीं था। मेरी राय में संघ के प्रतिनिधि में यह भ्रष्टा थी कि वह यह मिल करता कि सेवा मुक्ति के समय ही यादव से कनिष्ठ व्यक्ति शास्त्रा प्रबंधक के पद पर नियोजित था और सेवा मुक्ति के उपरान्त भी शास्त्रा प्रबंधक के पद पर किन नये व्यक्तियों को नियोजित किया गया था जिसके अन्तर्व में यह तर्क भी चलने योग्य नहीं है। यह उल्लेखनीय है कि मामले के अंतिम स्टेज पर 3-1-91 को संघ के प्रतिनिधि ने एक अर्जी प्रस्तुत कर कुछ प्रलेख पेश करने की अनुमति चाही थी जो अनुमति 7-3-91 को ही गई थी। इन प्रलेखों में 30-6-89 में कार्यरत अधिकारियों को अंतिम वरिष्ठता सूची पेश की है जिसकी कम सं० 42 लगावत 46 पर 22-5-85 की नियुक्त 5 शास्त्रा प्रबंधकों के नाम का उल्लेख है। परन्तु इससे यह निष्कर्ष नहीं निकलता कि उनमें से कोनसा या कोई शास्त्रा प्रबंधक भी यादव से कनिष्ठ था। इस सूची में यह भी प्रकट होता है कि वर्ष 1986 में नये शास्त्रा प्रबंधकों की भी भर्तों को गई थी। यह उल्लेखनीय है कि शास्त्रा प्रबंधकों की भर्ती करने से पूर्व अप्रार्थी के सेवा नियमों के अनुसार शिक्षित परीक्षा एवं साक्षात्कार होता है जिनमें सकल रहने पर ही शास्त्रा प्रबंधक का चयन होता है। इसपिए आहे सेवा मुक्ति के उपरान्त वर्ष 1986 में नये शास्त्रा प्रबंधकों की भर्ती की गई हो उससे धारा 25-एच के प्रावधानों का उल्लंघन नहीं होता है।

24. श्री काला नियोजक प्रतिनिधि ने उल्लंघन न्यायालय के न्याय वृष्टान्त राम किशन जंदा बनाम बूद्धी चिलोड़गढ़ धोकीय ग्रामीण बैंक सिविल अधीक्षा सं० 1556/88 नियंत्रण दिनांक 23-1-92 की भी भी फोटो प्रति पेश की है जिसके तथ्य और परिस्थितियों तो विवेचनाधीन विवाद पर यात्रा प्रसिद्ध लागू होते हैं क्योंकि इसमें भी अधीक्षाधीन श्री राम किशन बैंकरा की नियुक्ति शास्त्रा प्रबंधक के पद पर 2 वर्ष की परिवीक्षा पर की गई थी और उक्त परिवीक्षा व्यवधि के दौरान ही नियोजक ने श्री बैंकरा को उसके हातारा की गई गलतियों बाबत सतर्क किया था परन्तु फिर भी श्री बैंकरा में सुधार नहीं पाया तो उसे कारण बताओ नोटिस जारी किया गया जिसका जवाब भी श्री बैंकरा से दे दिया परन्तु किरणी नियुक्ति भारतेश की शर्तों तथा बैंक के रूपलेन 8(3)(4) के अनुसार साक्षात्कार भारतेश द्वारा एक माह का बेनन देने हुए सेवा मुक्ति कर दिया। उक्त भारतेश से व्यक्ति होकर भी बैंकरा ने राजस्थान उच्च न्यायालय में

रिट दायर की जहाँ असकन रहने पर खण्ड पीठ में भी अधीक्षा की जहाँ पर भी कोई अनुतोष नहीं मिला तो माननीय उच्चालय न्यायालय में विशेष अनुमति लेकर अधीक्षा दायर की जिस पर निम्न मत व्यक्त किया गया:

'What weighed with the High Court was that prior to the issuance of the notice dated 7-10-86 there was a course of conduct reflective from the correspondence between the bank and appellant suggesting that the appellant was not coming up to the expectations of the bank in the performance of his duties. That is the reason why he was time and again cautioned and duties. It has to be borne in mind that the post of have been more vigilant in the performance of his duties. It has to be borne in mind that the post of the appellant was that of trust. He was entrusted with a fair amount of discretion towards disbursement of loans and money handling. This function of the appellant brooked not laxity and had to remain in a fiscal discipline more so when he was meaning a branch independently. His attention was invited to a transaction suggestive of loss to the bank. One such instance was that he signed a voucher relating to a transaction which was not reflected in the ledger. On this basis the appointing authority could arrive at a stage to stop probating the appellant any further and entertain the view that the appellant was not fit for confirmation on the post even though such view of unfitness was not expressed in so many words. Rather the order of discharge mentions that in terms of the letter of appointment, without assigning any reason, the appellant stands discharged. We have to see the substance of the matter and not bare of words. We are on these circumstances, satisfied that there was no vindictiveness involving the discharge of the appellant. The authorities of the bank took the action as a protective measure to keep their services trim and in good shape."

25. विवेचनाधीन विवाद में भी अनुस्वार-2 21-11-85 के नोटिस द्वारा श्री यादव को सूचित किया गया कि उसने 5-8-85 को स्वयं के बैंक आता सं० 114 में 30 रुपये की राशि अनाधिकृत रूप से मिकाल जिस पर खुल ने ही कुमारी अनीता खोलता करियर-कम्पनी के हस्ताक्षर कर लिये और उक्त आक्षर भी नष्ट कर दिया तथा 2 अगस्त 1985 को हाजिरी रजिस्टर में कुमारी अनीता खोलता के लघु हस्ताक्षर भी स्वयं ने ही कर लिये। अभिप्राय यह है कि श्री यादव के स्पष्टीकरण के पश्चात् निष्कर्ष पर पहुंचे कि बैंक के शास्त्रा प्रबंधक जैसे पद पर श्री यादव का जारी रखना उचित नहीं है जिसने परिवीक्षा व्यवधि के दौरान ही बैंक के रिकाउं एवं बांकर बैंकर में फर्जीकारी करना प्रारम्भ कर दिया था। यह उल्लेखनीय है कि न तो क्लेम में ही यह वर्जे किया गया कि श्री यादव को अवार्थी ने हिरी पूर्वायं या दूषित मत्तव्य से सेवा मुक्ति किया हो न ही श्री यादव ने अपने ग्रापथ पत्र में उक्त तथ्यों का उल्लेख किया विलिं इम्फे विवरीन श्री यादव प्रति परीक्षा में स्वीकार करते हैं कि उनका और बैंकरी का मार्गी कोई लगाव नहीं था। इन परिस्थितियों में मानवीय उद्दाव तथा व्यवधि के उपरोक्त न्याय वृष्टान्त के प्रत्युत्तर भी मेरो राय में श्री यादव का कोई अनुतोष नहीं था। इन परिस्थितियों में मानवीय उद्दाव तथा व्यवधि के उपरोक्त न्याय वृष्टान्त के प्रत्युत्तर भी मेरो राय में श्री यादव का कोई अनुतोष नहीं था।

26. अन्य किसी प्रकार का तर्क किसी भी पक्षकार के प्रतिनिधि ने बहस के दौरान मेरे समझ प्रस्तुत नहीं किया।

27. तथ्यों और विधि के उपरोक्त मत्तव्य विवादीय विवरांत इस निर्वेश का अधिनियम निम्न प्रकार से किया जाता है:

"श्री राम दयाल यादव, शास्त्रा प्रबंधक अस्थूपुरा को 10-12-85 से की गई सेवा मुक्ति उचित पर्व वैध है और यह किसी अनुतोष का अधिकारी नहीं है। पक्षकारान् व्यवधि अपना अपना वर्द्धित करेंगे।"

28 प्रवाई की प्रति केन्द्र राज्य सरकार के अन्तर्गत धारा (17) (प्रधिनियम के नियमानुसार प्रकाशन हेतु पठाई जावे।

जगत सिंह, पीठासीन प्रधिकारी

नई दिल्ली, 28 जून 1992

कांग्रेस 2205—जौर्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन द्वारा इस्तियाके प्रबन्धनत्व के सबूत नियोजको और उनके कर्मकारों के लिए, अनवधि से निर्दिष्ट और्योगिक विवाद में जौर्योगिक प्रधिकरण, आंध्रप्रदेश के पचपट की प्रकाशित करती है, जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[संख्या पल-42012/133/86-डी-11 (बी)]

मुमाल चर्च भर्म, डेस्क प्रधिकारी

New Delhi, the 28th July, 1992

S.O. 2205—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-92

[No L-42012/133/86-D III(B)]
S. C SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT.

Sri G Krishna Rao, B.A., B.L., Industrial Tribunal.

Fourteenth Day of July Nineteen Hundred Ninety Two
Industrial Dispute No 50 of 1988

BETWEEN

The Workmen of Food Corporation of India, Kurnool (A.P.) Petitioner

AND

The Management of Food Corporation of India, Kurnool (A.P.) Respondent.

This case is coming for final hearing before me in the presence of M/s G Bikshapathi, G. Vidya Sagar, V. Vishwanatham, N. Vinesh Raj and K V V. Bhasker, Advocates for the Petitioner-workmen and Sri K Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court passed the following

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No L 42012/133/86-D II (B) dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

'Whether the action of the management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri L Mohammed Basha Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?"

The said reference was registered as ID No 50 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 19-1-1988 and the Respondent filed counter on 7-12-1988.

2 The averments of the claim statement filed by the Petitioner read as follows.

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of paddy. During the year 1973-77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweeper, Assistant (Depo), etc., was done on daily rate basis. Having realised that the appointment of employees on rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette Notification is extracted below :

'Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange'

It is submitted that the Petitioner worked as Watchman from 13-2-1976 to 25-1-1977 and his services were disengaged from 3-5-1977 without any notice or any valid reasons. Ever since the disengagement, the Petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law, rejected the case for reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India, the Petitioner filed Writ Petition No 17056/1987. The Hon'ble High Court of Andhra Pradesh, by an Order dated 17-6-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned single Judge, the Management has filed Writ Appeal and the same was dismissed by the Hon'ble Court. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of disengagement is illegal and arbitrary. The Petitioner made several representations but the management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workman appointed subsequent to the Petitioner's appointment were continued but the services of the Petitioner were terminated. The alleged action is also violative of Section 25 H of the Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination the Petitioner is unemployed and could not secure any alternative employment inspite of his best efforts. The Petitioner

facing severe financial difficulties due to unemployment. There are no latches on the part of the Petitioner ever since the disengagement in May, 1977. The Petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the disengagement of the Petitioner with effect from 3-5-1977 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent Management to reinstate the Petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows :

It is submitted that the Petitioner was engaged as Daily Rated Watchman during the period from 13-2-1976 to 4-5-1977 depending upon the exigency of work. The Petitioner did not work continuously for 240 days. The provision of Section 25(F) of the Industrial Disputes Act does not apply to the present case. The non-engagement of the Petitioner is legal, valid and according to law. The Petitioner's services were engaged only on Casual basis depending on the exigencies of work and as such the Petitioner is not entitled for reinstatement/regular appointment in the F.C.I. That apart the Petitioner name was not sponsored by Employment Exchange for considering for regular employment at that time. The Petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the Petitioner made several representations. In fact since 1976 till 1986 the Petitioner never made any representation. The instructions issued in Head-Quarters Gazette notification does not apply to the Petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the Petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W. 1 was examined for the Petitioner and the Petitioner's side was closed. Exs. W1 to W6 were marked for the Petitioner. M.W. 1 was examined for the Respondent and the Respondent's side was closed. No document was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri L. Mohammed Basha, Ex-Watchman is justified? If not, to what relief the workman concerned is entitled to?

6. POINT:—The admitted facts of the case are that the Petitioner was appointed as Watchman on daily wage basis from 13-2-1976 and he worked in the Respondent Corporation till 2-5-1977 with intermittent breaks and the services of the Petitioner were being terminated and he was being re-appointed and finally he was terminated from service from 3-5-1977. The case of the Petitioner was that inspite of the repeated requests, the Respondent-Corporation did not reinstate him after 2-5-1977 and therefore in 1985 he resorted to the conciliation proceedings, that the conciliation failed and that the Petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated into service.

7. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I.D. Act are not applicable to this case and the Petitioner is not entitled for reinstatement in this case. The question that is to be decided is whether the Petitioner worked for more than 240 days, for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25-F of the I.D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross examination M.W. 1 stated that the Petitioner worked in the Respondent-Corporation from 13-2-1976 to 4-5-1977 with break of one or two days in

every month of his service, though he denied the suggestion that the Petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M.W. 1 that the Petitioner worked for about one year three months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks which leads to the inevitable inferences that the Petitioner worked continuously for more than 240 days in view of the evidence of M.W. 1, when he categorically deposed that the Petitioner worked in the Respondent-Corporation from 13-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I.D. Act would come into play, as the removal of the Petitioner from service amounts to retrenchment as defined in Section 2(oo) of the I.D. Act and the Respondent-Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation as contemplated under Section 25-F of the I.D. Act. It is admitted by M.W. 1 that at the time of dismissing the Petitioner from service, one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the Petitioner was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to date of his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I.D. Act, before retrenching the Petitioner from service. So it is clear from the evidence brought on record that the Respondent-Corporation did not comply with the mandatory provisions of Section 25-F of the I.D. Act in not paying the retrenchment compensation.

8. It is contended by the learned counsel for the Respondent that as against the judgement in W.A. No 174/88 the Respondent Corporation filed SPL. No. 5178-79/90 on the file of the Supreme Court of India and that the order in the said Civil Appeals was made by the Supreme Court of India on 31-10-1990 and that as per the said Order, the Government of India has to give an opportunity of being heard to both parties before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent-Corporation and that therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent-Corporation, this plea was not taken and raised in the counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both the parties before referring the matter to this Tribunal. On the other hand it is to be noted that the copy of the Order of the Supreme Court of India in Civil Appeal No. 5178-79/90 is not filed before this Tribunal by the Respondent-Corporation. It is also to be noted that the Order of the Supreme Court in Civil Appeal No. 5178-79/90 was passed long subsequent to the date of the reference i.e. 29-4-1988 made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent-Corporation. It is in the evidence of M.W. 1 that after the judgement of the High Court in the Writ Petition, the Government of India did not give an opportunity of being heard to the Respondent-Corporation before referring the dispute to this Tribunal. It is to be noted that M.W. 1 deposed that he has been working as Assistant Manager in the Respondent-Corporation since 1958 and that has been working at Kurnool since June 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour, by its Order dated 29-4-1988 by which time M.W. 1 was not working in Kurnool office and so it cannot be said that M.W. 1 has got personal knowledge whether Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M.W. 1 to say that he is speaking from out of the record available as he was not having personal

knowledge of the matter in respect of things that have happened prior to June, 1990 in this case. So the statement of M.W. 1 that after the judgement of the High Court in W.P. No. 17056/87 the Government of India did not give opportunity of being heard to the Respondent before referring the dispute to this Tribunal and carry any weight. Therefore I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. In view of my discussion, I am of opinion that the Petitioner is entitled for the relief of reinstatement with continuity of service, but without back wages under the facts and circumstances of the case and in view of the admission made by the Petitioner in his evidence as W.W. 1 that he may be reinstated without back wages. Hence I answer the point accordingly.

9. In the result an Award is passed directing the Respondent-Corporation to reinstate the petitioner into service with continuity of service, but without back wages. The Respondent-Corporation is further directed to reinstate the Petitioner within one month from the date of the publication of this award failing which the Petitioner is entitled to recover the wages from the date of publication of this Award. There will be no order as to costs under the facts and circumstances of the case.

G. KRISHNA RAO, Industrial Tribunal

Appendix of Evidence

Witness examined for
the Workmen.

W.W. 1 L. Mohammed Basha

Witnesses examined for the
Management.

M.W. 1 F. J. Challa Dorai.

Documents marked for the Workman

Ex. W1—Termination order dt. 11-5-76 issued to L. Mohammed Basha and five others by the District Manager, F.C.I., Kurnool.

Ex. W2—Termination order dt. 5-5-77 issued to L. Mohammed Basha and five others by the District Manager, F.C.I., Kurnool.

Ex. W3—Representation dt. 3-1-78 of L. Mohammed Basha to the Sr. Regional Manager, F.C.I., Hyderabad with regard to regularisation of appointment.

Ex. W4—Representation dt. 24-12-85 of L. Mohammed Basha to the Asst. Labour Commissioner (C) Hyderabad, Hyderabad, with regard to illegal termination of service.

Ex. W5—Minutes of conciliation proceedings held on 17-7-86.

Ex. W6—Failure of conciliation report dt. 1-10-86.

Documents marked for the Management

NIL

Sd/- Industrial Tribunal

नई दिल्ली, 28 जुलाई, 1992

कानूनी 2206 :—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रनुसार में, केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धताव के संचालन नियोजकों और उनके वर्षकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकारण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या प्रल-42012/134/86-डी-II(बी)]

सुभाष चन्द्र शर्मा, डैस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/134/86-D. II(B)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Shri G. Krishna Rao, B. A. B. L., Industrial Tribunal.
FOURTEENTH DAY OF JULY NINETEEN HUNDRED
NINETY TWO

INDUSTRIAL DISPUTE NO. 49 OF 1988.

BETWEEN :

The Workmen of Food Corporation of India, Kurnool
(A. P.) ...PETITIONER

AND

The Management of Food Corporation of India, Kurnool
(A.P.) ...RESPONDENT

This case is coming for final hearing before me in the presence of M/s. G. Bikshapathi, G. Vidya Sagar, V. Vishwanath, N. Vinesh, Raj and K. V. Bhasker, Advocate for the Petitioner-workmen and Shri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court Passed the following.

AWARD :

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/134 86-D. II(B), dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

“Whether the action of the management of Food Corporation of India, Kurnool (A. P.) in terminating the services of Shri M. Shankar Nath, Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?”

The said reference was registered as I. D. No. 49 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance, and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1972-77 there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was

introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette Notification is extracted below :

"Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is submitted that the Petitioner worked as Watchman from 13-4-1976 to 25-4-1977 and his services were disengaged from 26-4-1977 without any notice or any valid reasons. Ever since the dis-engagement, the Petitioner has been making representations personally and also through Union to consider him candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central Hyderabad). However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law, rejected the case for reference to this Hon'ble Tribunal Aggrieved by the decision of the Government of India, the petitioner filed Writ Petition No. 17018/1987. The Hon'ble High Court of Andhra Pradesh, by the Order dated 3-2-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned single Judge, the Management has filed Writ Appeal No. 917/1988 and the same was dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of dis-engagement is illegal and arbitrary. The Petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workman appointed subsequent to the Petitioner's appointment were continued but the services of the Petitioner were terminated. The alleged action is also violative of Section 25-M of the Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the Petitioner is unemployed and could not secure any alternative employment in spite of his best efforts. The Petitioner is facing severe financial difficulties due to unemployment. There are no latches on the Part of the Petitioner ever since the dis-engagement in April, 1977. The Petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the dis-engagement of the Petitioner with effect from 26-4-1977 as illegal, arbitrary and un-warranted and consequently pass an award directing the Respondent Management to reinstate the petitioner into service with all consequential benefits.

3 The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 13-4-1976 to 25-4-1977 depending upon the exigency of work. The petitioner did not work continuously for 240 days. The provision of Section 25(F) of the Industrial Disputes Act does not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement/regular appointment in the FCI. That apart the petitioner's name was not sponsored by Employment Exchange, for considering for regular employment at that time. The petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising

the dispute. It is totally incorrect to say that since 1976 the petitioner made several representations. Infact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Head-quarters Gazette Notification does not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W. W. 1 was examined for the petitioner and the petitioner's side was closed. Exs. W/1 to W/8 were marked for the Petitioner. MW-1 was examined for the respondent and the Respondent's side was closed. No document was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Shri M. Shankar Natch, Ex- Watchman is justified? If not, to what relief, the workman concerned is entitled to?"

6. POINT :—The admitted facts of the case are that the Petitioner was appointed temporarily on daily rate wages from 13-4-1976 and he worked in the Respondent Corporation till 25-4-1977 with intermittent breaks and the services of the Petitioner were being terminated and he was being re-appointed and finally he was terminated from service from 25-4-1977. The case of the Petitioner was that inspite of the repeated requests, the Respondent Corporation did not reinstate him after 25-4-1977, and therefore in 1986 he reported to the conciliation proceedings, that the conciliation failed and that the petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory revisions of Section 25-F of the I. D. Act and therefore he is entitled to be reinstated into service.

7. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I. D. Act are not applicable to this case and the Petitioner is not entitled for reinstatement in this case. The question that is to be decided is whether the Petitioner worked for more than 240 days, for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25-F of the I. D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross examination M. W. 1 stated that the Petitioner worked in the Respondent Corporation from 13-4-1976 to 25-4-1977 with breaks of one or two days in every month of his service, though he denied the suggestion that the Petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M. W. 1 that the Petitioner worked for about 12 months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks which leads to the inevitable inference that the Petitioner worked continuously for more than 240 days in view of the evidence of M. W. 1, that he categorically deposed that the petitioner worked in the Respondent Corporation from 13-4-1976 to 25-4-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I. D. Act would come into play, as the removal of the petitioner from service amounts to retrenchment as defined in Section 2(00) of the I. D. Act and the Respondent Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation, as contemplated under Section 25-F of the I. D. Act. It is admitted by M.W. 1 that at the time of dismissing the petitioner from service, one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the petitioner was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner worked

continuously for more than 240 days within the period of 12 months immediately prior to date of his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I. D. Act before retrenching the petitioner from service. So it is clear from the evidence brought on record that the Respondent Corporation did not comply with the mandatory provisions of Section 25-F of the I. D. Act in not paying the retrenchment compensation.

8. It is contended by the learned counsel for the Respondent that as against the judgement in W. A. No. 173/88 the Respondent Corporation filed SPL No. 5178-79/90 on the file of the Supreme Court of India and that the order in the said Civil Appeal was made by the Supreme Court of India on 31-10-1990 and that as per said Order, the Government of India has to give an opportunity of being heard to both parties before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent Corporation and that therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent Corporation, this plea was not taken and raised the counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both the parties before referring the matter to this Tribunal. On the other hand it is to be noted that the copy of the Order of the Supreme Court of India in Civil Appeal No. 5178-79/90 is not filed before this Tribunal by the Respondent Corporation. It is also to be noted that the Order of the Supreme Court in Civil Appeal No. 5178-79/90 was passed long subsequent to the date of the reference i.e. 29-4-1988 made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent Corporation. It is in the evidence of M. W. 1 that after the judgement of the High Court in Writ Petition, the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal. It is to be noted that M. W. 1 deposed that he has been working as Assistant Manager in the Respondent Corporation since 1958 and that he has been working at Kurnool since June, 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour, by its order dated 29-4-1988 by which time M. W. 1 was not working in Kurnool Office and so it cannot be said that M. W. 1 has got personal knowledge whether Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M. W. 1 to say that he is speaking from out of the record available as he was not having personal knowledge of the matter in respect of things that have happened prior to June, 1990 in this case. So the statement of M. W. 1 that after the judgement of the High Court in W. P. No. 17018/87 the Government of India did not give an opportunity of being heard to the Respondent before referring the dispute to this Tribunal and carry any weight. Therefore I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. In view of my discussion, I am of opinion that the Petitioner is entitled for the relief of reinstatement with continuity of service, but without back wages under the facts and circumstances of the case and in view of the admission made by the Petitioner in his evidence as W. W. 1 that he may be reinstated without back wages. Hence I answer the point accordingly.

9. In the result, an Award is passed directing the Respondent Corporation to reinstate the Petitioner into service with continuity of service, but without back wages. The Respondent Corporation is further directed to reinstate the petitioner within one month from the date of the publication of this Award, failing which the petitioner is entitled to recover the wages from the date of publication of this Award. There will be no orders as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 14th day of July, 1992.

G. KRISHNA RAO, Industrial Tribunal

APPENDIX OF EVIDENCE

Witnesses examined for Workmen.

W. W. 1 M. Shankarnath

Witnesses examined for the Management.

M. W. 1 F. J. Chella Dera.

Documents marked for the Workmen.

Ex. W. 1—Appointment order dated Nil issued to M. Shankarnath by the District Manager, Food Corporation of India, Kurnool.

Ex. W. 2/9-7-1986.—Termination order dated 9-7-1986 issued to M. Shankarnath and 9 others by the Distt. Manager, I. C. I. Kurnool.

Ex. W. 3/14-7-1976.—Appointment order dated 14-7-76 issued to K. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.

Ex. W. 4/11-10-76.—Termination order dated 11-10-76 issued to K. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.

Ex. W. 5/14-10-1976.—Appointment order dated 14-10-1976 issued to M. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.

Ex. W. 6/24-12-1985.—Photostat copy of the representation dated 24-12-1985 made by M. Shankarnath to the Asstt. Labour Commissioner (C), Hyderabad, Hyderabad.

Ex. W. 7/17-7-1986.—Photostat copy of the Minutes of Conciliation proceedings held on 17-7-1986.

Ex. W. 8.—Photostat copy of the failure of conciliation report.

नई दिल्ली, 28 अक्टूबर, 1992

कांगड़ा ३१०७—आंतरिक विवाद अधिकार, 1947 (1947 का १४) का भाग १७ के अनुसार में, भौतिक सरकार कूट कार्यपालिका अंतर्गत हाईकोर्ट प्रबन्धन के संदर्भ निर्देशकों और उनके कर्मकारों के बाच, अनुसार में लिंटिंग आंतरिक विवाद में आंतरिक अधिकार हैदराबाद के पास दो प्रश्नावाली हैं, जो केरलीय सरकार का 27-7-92 का प्राप्त हुआ था।

[संलग्न पृष्ठ- 42012/88/86-D-II (बी)]
सुभाष शर्मा, दिल्ली प्रधिकारी

New Delhi, the 28th July, 1992

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/88/86-D-II(B)]

S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL AT HYDERABAD
PRESENT :

SI, G. Krishna Rao, B.A., B.L., Industrial Tribunal.

FOURTEENTH DAY OF JULY NINETEEN HUNDRED
NINETY TWO

Industrial Dispute No. 51 of 1988

BETWEEN :

The Workmen of Food Corporation of India,
Kurnool (A.P.) ... PETITIONER

AND

The Management of Food Corporation of India,
Kurnool (A.P.) ... RESPONDENT

This case is coming for final hearing before me in the presence of M/s G. Bikkapati, G. Vidya Sagar, V. Vishwanatham, N. Venk Raj and K. V. V. Bhaskar, Advocates for the petitioner-workmen and Sri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court passed the following :

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/88/86-D.II (B) dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

"Whether the action of the management of Food Corporation of India, Kurnool (A.P) in terminating the services of Sri A. Noor Ahmed, Ex-daily rated watchman is justified? If not, to what relief, the workman concerned is entitled to?"

The said reference was registered as I.D. No. 51 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1973-77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette notification is extracted below :

"Provided further such of the employees who were recruited on daily rated basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is submitted that the Petitioner worked as Watchman from 1-6-1976 to 28-8-1976 and his services were dis-engaged from 29-8-1976 without any notice or any valid reasons. Ever since the dis-engagement, the petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on

erroneous consideration of the facts on law, rejected the case for reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India, the petitioner filed Writ Petition No. 1601/1987. The Hon'ble High Court of Andhra Pradesh, by an order dated 3-2-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned Single Judge, the management has filed writ appeal No. 921/1988 and the same was dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of dis-engagement is illegal and arbitrary. The petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workmen appointed subsequent to the petitioner's appointment were continued but the services of the petitioner were terminated. The alleged action is also violative of Section 25-H of Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the petitioner is unemployed and could not secure any alternative employment in spite of his best efforts. The petitioner is facing severe financial difficulties due to unemployment. There are no latches on the part of the petitioner even since the dis-engagement in August, 1976. The petitioner has been making several representations to the management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the dis-engagement of the petitioner with effect from 28-8-1976 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent-Management to reinstate the petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 1-6-1976 to 28-8-1976 depending upon the exigency of work. The petitioner did not work for 240 days. The provisions of Section 25(F) of the Industrial Disputes Act do not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement/regular appointment in the F.C.I. that apart the petitioner name was not sponsored by Employment Exchange for considering for regular employment at that time. The petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the petitioner made several representations. Infact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Head Quarters Gazette Notification do not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W. 1 was examined for the petitioner and the Petitioner's side was closed. Exs. W1 to W3 were marked for the Petitioner. M.W.1 was examined for the Respondent and the Respondent's side was closed. Ex. M-1 was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P) in terminating the service of Sri A. Noor Ahmed, Ex. Daily rated watchman is justified, if not, to what relief, the workman concerned is entitled to?

6. POINT.—The admitted facts of the case are that the Petitioner worked as Watchman from 1-6-1976 to 28-8-1976 on daily rated wages, that the petitioner was removed from service from 29-8-1976. The contention of the petitioner was that ever since the dis-engagement the petitioner has been making representation personally and also through the Union

to consider his candidature for regular appointment in pursuance of the Employees Service Regulations of 1976, that there is no response, that he moved the conciliation proceedings before the Asstt. Labour Commissioner, Central, Hyderabad, that however there was no meeting point between the parties that the conciliation ended in failure, that the Conciliation Officer sent failure report to the Government of India, that the Government of India on erroneous consideration of the facts on law rejected the case for reference to this Tribunal, that aggrieved by the decision of the Government, the Petitioner filed Writ Petition No. 16011/1987 that the Hon'ble High Court by an Order dated 3-2-1988 allowed the Writ Petition and directed the Government of India to refer the matter for adjudication to this Tribunal, that aggrieved by the Orders of the learned single Judge, the management has filed Writ Appeal No. 921/88 and the same was dismissed by an Order dated 23-6-1988, that is pursuance of the Orders of the High Court of Andhra Pradesh, the present reference was made to this Tribunal, that the impugned order of disengagement is illegal, and arbitrary, that the Petitioner made several representations but the Management have not considered the same, that the termination is illegal, arbitrary and unwarranted, that the workman was appointed subsequent to the petitioner's appointment were continued but the services of the petitioner were terminated and that he is entitled for reinstatement. It is contended for the Respondent that the Petitioner did not work for 240 days, that the provisions of Section 25-F of the I.D. Act do not apply to the present case, that the non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigency of work and as such the petitioner is not entitled for reinstatement on regular appointment in the Food Corporation of India, the petitioner's name is not sponsored by the Employment Exchange for considering the regular employment, that the instructions issued in Head Quarters Gazette Notification do not apply to the petitioner's case. The petitioner examined i.e. the concerned workman himself as W.W. 1 to establish his case and he deposed that he worked as Watchman in Food Corporation of India, Kurnool from 1-6-1976 to 28-8-1976, that Ex. W1 is the appointment letter dated 1-6-76, that after his termination, he made representations to the Management orally for appointment, but the Management did not take him into duty, although godowns are still in existence, that whereas new persons were taken and in this case was not considered, that thereafter he raised the dispute, that Ex. W2 is the minutes of the conciliation proceedings held on 6-3-86, that Ex. W3 is the failure report dated 11-4-1986, that he prays that an Award may be passed ordering reinstatement without back wages. During the cross-examination he stated that only for three months he worked in the Respondent Office, that too on daily wage basis though they used to be paid once a month.

7. The Respondent examined M.W.1 and he deposed that he knows the petitioner, that he worked as daily rated watchman from 1-6-1976 to 28-8-1976 at hired godowns at Kurnool under the Respondent Corporation and the petitioner was being employed as per the need, that during the years 1976 and 1977 they have buffer stocks that they hired godowns for keeping the said buffer stocks during those two years, that after distribution of the stocks, the godowns hired vacated, that they had terminated the services of the petitioner w.e.f. 28-8-1976 and thereafter he was not employed, that the termination order dated 28-8-1976 was issued to the petitioner terminating his services with effect from 28-8-1976 afternoon and it was served on the petitioner and the office copy of the said termination order was not available now that after termination of the services of the petitioner under the order dated 28-8-1976 the petitioner never represented to the Respondent Corporation to employ him again nor did he challenge the action of the Respondent in terminating the services at any time till he raised the dispute in this case after lapse of nine years, that the petitioner was not sponsored by the Employment Exchange and he was first appointed in the year 1976, that the Head Office of the Respondent Corporation at Delhi issued a circular dated 7-9-1977 issuing instructions to the subordinate offices to conduct interviews to the candidates who are appointed before 25-1-1976 along with the candidates sponsored by the Employment Exchange, that interviews were conducted to those who were in service appointed prior to 25-1-1976 along with the candidates sponsored by the Employment Exchange, that the petitioner was

not interviewed because he was not appointed prior to 25th January, 1976 and his name was also not sponsored by the Employment Exchange, that the godowns were closed after April, 1977 that all the daily rated workmen were terminated from service after closure of the godowns, that after closure of the godowns, no daily rated watchman was employed, that the Government of India did not refer the matter for adjudication after the petitioner raised the dispute, that the petitioner filed W.P. No. 16011 of 1987 on the file of the High Court of Andhra Pradesh against the Respondent and Government of India to issue directions to the Government of India to refer the dispute to this Court for adjudication, that W.P. No. 16011 of 1987 was allowed by the High Court of Andhra Pradesh on 3-2-1988, that thereafter the Government of India did not issue any notice to the Respondent Corporation to hear the matter on merits and referred the dispute to this Court for adjudication, that similarly one Mr. A. Basha Saheb filed Writ Petition No. 18177 of 1987 on the file of the High Court of Andhra Pradesh for issue of a similar direction against the Government of India and the Respondent, that in the Writ Petition filed by the Petitioner and Mr. A. Basha Saheb, the High Court directed the Government of India to refer the dispute to this Industrial Tribunal, that as against the judgement in W.P. No. 18177 of 1987 the Respondent Corporation filed Writ Appeal No. 174 of 1988 on the file of the High Court of Andhra Pradesh and the same was dismissed confirming the judgement in Writ Petition, that as against the judgement in Writ Appeal No. 174 of 1988 the Respondent filed SLP No. 5178-79 of 1990 on the file of Supreme Court of India, that the order in the said Civil Appeal was made by the Supreme Court of India on 31-10-1990 and that Ex. M1 is the photostat copy of the said order.

8. The main point that falls for consideration in this case is whether the petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his retrenchment or removal from service, for the petitioner to claim, that the Respondent failed to comply with the provisions of Section 25-F of the I.D. Act and therefore he is entitled for reinstatement. Admittedly. Even according to the case of the Petitioner, the petitioner worked for the period from 1-6-1976 to 28-8-1976 in the Respondent Corporation. Even if it is taken that the petitioner worked on all the days during that period i.e. even on holidays and Sundays, the total period he worked would come to 89 days only and it is not the case of the petitioner that he worked during any other period during the period of 12 months immediately prior to the date of his removal from service, besides the period from 1-6-1976 to 28-8-1976. Therefore, in any view of the matter, the contention of the petitioner that he is entitled for reinstatement does not stand under law as he did not work for 240 days continuously within the period of 12 months immediately prior to the date of his removal from service which is minimum requirement for attracting the provisions of Section 25-F of the I.D. Act. In any view of the matter, the petitioner is not entitled for any relief in this case in my opinion. Therefore, I hold that the petitioner is not entitled for the relief of reinstatement or any other relief in this case. Hence I answer the point accordingly.

9. In the result, an Award is passed holding that the Petitioner is not entitled for reinstatement or for any relief in this case. There will be no order as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 14th day of July, 1992.

G. KRISHNA RAO, Industrial Tribunal

Appendix of evidence

Witnesses examined
for Petitioner.

W.W. 1 A. Noor Ahmed

Witnesses examined
for Respondent.

W.W. 1 P. J. Challa Diorai

Documents marked for the Petitioner.—workmen.

Ex. W1—Appointment order dated 1-6-76 issued to A. Noor Ahmed by the District Manager, F.C.I., Kurnool.

Ex. W2—Photostat copy of the minutes of conciliation proceedings held on 6-3-1986.

Ex. W3—Failure of conciliation report dated 11-4-1986.
Documents marked for the Respondent.—Management.

Ex. M1 31-10-90—Photostat copy of the Supreme Court order in Civil Appeal No. 5178-79/1990.

नंदा दिल्ली, 28 जुलाई, 1992

कानून 2208.—अधिकार विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा कोल्यापग थाने मैसर्स इंडीयनो के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, आसनसोल के पंचपट को प्रकाशित करनी है जो केन्द्रीय सरकार का 23-7-92 को प्राप्त हुआ था।

[संखा एन-422012/329/91-आर्ड मार (सी-II)]

मुख्य चन्द्र शर्मा, ईस्ट अधिकारी

New Delhi, the 28th July, 1992

S.O. 2208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dabur Colliery of E.C. Ltd. and their workmen, was received by the Central Government on 23-7-1992.

[No. L-22012/329/91-IR(C-II)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 13/92

PRESENT :

Shri N. K. Saha Presiding Officer.

PARTIES :

Employers in relation to the Management of Dabur Colliery of M/s. E. C. Ltd.

AND

Their Workman.

APPEARANCES :

For the Employers—Sri B. N. Lala, Advocate.

For the Union—None.

INDUSTRY: Coal.

STATE: West Bengal

Dated, the 16th July, 1992

AWARD

The Govt. of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section

(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/329/91-IR (C-II) dated the 4th March, 1992.

SCHEDULE

“Whether the action of the Management of Rangakunj Colliery of Dabur Colliery of M/s. Eastern Coalfields Ltd., P. O. Samdi, Dist. Burdwan, in not sending Shri Fakir Paul, Water Mazdoor to Medical Board as per I. I. No. 76 is justified? If not, to what relief is the concerned workman entitled to?”

2. This Reference was received by this Tribunal on 10-3-92. The union appeared and took several adjournments for filing written statement and ultimately filed written statement on 30-6-92. But in the meantime the workman filed an application for passing a no-dispute award. Accordingly notice was issued both to the union and to the workman to appear to-day (16-7-92). The unions representative Sri Bidyut Mondal files a petition signed by Sri S. K. Jha, Vice-President of the union stating that the workman is no more interested in the dispute and he has applied for a no-dispute award. Sri Fakir Paul the concerned workman who is present in Court to-day also submits that he is longer interested to proceed with this case and prays for passing a no-dispute award.

3. In the above circumstances, I have no other alternative but to pass a no-dispute award. Accordingly a no-dispute award is passed in this case.

N. K. SAHA, Presiding Officer

नंदा दिल्ली, 29 जुलाई, 1992

कानून 2209.—अधिकार विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नाशकोरा कोल्यापग थाने मैसर्स इंडीयनो के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, आसनसोल के पंचपट को प्रकाशित करनी है जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[संखा एन-22012/141/90-आर्ड मार (सी-II)]

मुख्य चन्द्र शर्मा, ईस्ट अधिकारी

New Delhi, the 28th July, 1992

S.O. 2209.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Nabakajora Colliery of M/s. E. C. Ltd. and their workmen, which was received by the Central Government on 27-7-92.

[No. L-22012/141/90-IR(C-II)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 47/90

PRESENT

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Nabakajora Colliery of Kajora Area of M/s. E. C. Ltd.

AND

Their Workman

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.
 For the Workman—Sri M. Mukherjee, Advocate.
 INDUSTRY: Coal. STATE :WEST Bengal.

Dated, the 21st July, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(4)90-IR (C-II) dated the 25th October, 1990.

SCHEDULE

“Whether the action of the management of Nabakajora Colliery of M/s. Eastern Coalfields Ltd., P. O. Kajoragram, Dist. Burdwan in dismissing Sri Bhunath Bouri, Line Mazdoor with effect from 6-8-86 is justified ? If not, to what relief is the concerned workman entitled ?”

2. The case of the union in brief is that Bhunath Bouri the concerned workman was Line Mazdoor of Nabakajora Colliery under M/s. Eastern Coalfields Ltd. He was a permanent employee of that colliery. Due to this illness he could not attend his duty from 7-3-86 to 28-4-86. For the said absence the concerned workman was straightway dismissed from service on 8-6-86 by the Agent/Manager of the said colliery. The said dismissal order is illegal, wrongful, motivated and against the principles of natural justice. The workman was not given any opportunity of being heard prior to his dismissal. The quantum of punishment is also disproportionate with the alleged offence. The management by imposing capital punishment has taken away bread of a poor innocent scheduled caste family. So the union prays for reinstatement of this workman with full back wages and seniority in service.

3. The union raised dispute on behalf of the workman. But the attempts of conciliation failed and the matter was sent to the Ministry of Labour, Govt. of India. Ultimately the dispute has been referred to this Tribunal for adjudication.

4. The management has filed written statement contending inter-alia that the sponsoring union is not a function union of the colliery and prior to raising of the present dispute the union made no representation or correspondence with the employer at any point of time. The workman was chargesheeted for misconduct committed by him. The workman failed to submit his reply against the charges. So a departmental enquiry was held. The enquiry was duly conducted. The workman was found guilty in that domestic enquiry and on the result of the same he was dismissed from service. The punishment is quite proportionate considering the gravity of the misconduct. So the workman is not entitled to get any relief in this case.

5. At the every outset Sri P. K. Das the ld. Advocate for the management has urged before me that the present dispute at the instance of the union is not maintainable as this union has no representative character. The union was not a functioning union of the colliery. So the present dispute is not maintainable. The union has failed to adduce any evidence on this point. So this point stands unrebuted.

Be that as it may, it may be that the union has no representative character, but according to Section 2A of the Industrial Disputes Act, 1947 the workman himself has the right to raise the dispute as it is a case of dismissal. So considering the fact's and circumstances of the present case I find that it is a dispute raised by the workman himself u/s 2A of the Industrial Disputes Act. So the present Reference is maintainable.

6. It is the case of the workman that no enquiry was held against him. The management failed to produce the record of the domestic enquiry proceedings on the plea; that it was missing and failed to substantiate that the domestic enquiry was properly and fairly held observing the principles of natural justice. So on 17-1-92 this Tribunal has held that the domestic enquiry was not properly and fairly held. The entire domestic enquiry proceedings and the findings of the same were set aside and this Tribunal decided to hold fresh enquiry and accordingly this Tribunal has held a fresh enquiry.

7. In this case the chargesheet against the workman framed by the management has been marked as Ext. M-2. Sri R. K. Roy, Sr. Personnel Officer of Nabakajora Colliery has been examined as MW-1. In addition to that the management has also produced documents Exts. M-3 to M-5 to show that in some other occasions the present workman absented himself without authority and he was warned for the same. The management has also produced a reply given by the present workman Ext. M-4. All the documents have been marked as Exhibits on formal proof being waived, but without admitting the contents of the same. In this case the workman has not examined himself and he has also not filed any document. Sri Manoj Mukherjee the ld. Advocate for the union has urged before me that the Ext. M-2 cannot be treated as chargesheet and the Court must hold that there is no charge against the present workman, as such the alleged charge must fail. He has further urged before me that even if the Court finds that the charge has been proved in that event the workman is also entitled to get his full back wages from the date of alleged dismissal upto the date of passing award by this Tribunal. In support of his contention he has cited before me the case reported in Lab. I.C. Page 1892. Further he has urged before me that past conduct of the workman cannot be considered by this Tribunal in this proceeding as there is no mention of the same in the chargesheet. In support of his contention he has cited before me the case reported in 1991 Lab.I.C. page 1039.

With due respect to his contention I like to say that every case comes with some background of its own. In the instant case it is admitted in the written statement that the workman was absent from 7-3-86 to 28-4-86. It is in the written statement that due to illness the workman could not attend his duty. But there is nothing to substantiate the said claim. I find that the charge against the workman in Ext. M-2 was duly framed and this Court has held the enquiry on the basis of this charge. In this charge it has been clearly stated that the workman had been absconding himself without any permission and authority w.e.f. 7-3-86. But during the course of hearing the workman did not venture to pledge his oath to refute the charge. So consequently considering the materials on record and the facts and circumstances I find that the charge levelled against the workman Bhunath Bouri has been proved. I find that the workman Bhunath Bouri is guilty of the charge as mentioned in the chargesheet Ext. M-2.

8. Now comes the question of imposing punishment. Sri P. K. Das the learned Advocate for the management has urged before me with all force that considering the instant misconduct of the present workman and his past conduct this Tribunal must dismiss the workman from service. With due respect to his contention I like to say that the dismissal from service is worse than capital punishment. The Hon'ble Supreme Court has held that capital punishment shall be imposed only in a rare of the rarest cases. This poor workman belongs to scheduled caste community. So the justice must be tampered with mercy. Sri Manoj Mukherjee has urged before me that according to the principles laid down in the case reported in 1990 Lab.I.C. page 1892 the workman is entitled to get full back wages and the Court has every power to be liberal in imposing the punishment in view of the cases reported in AIR 1989 (S.C.) page 149 and 1990 Lab.I.C. page 884.

9. Considering the facts and circumstances of every case the Court is to strike the balance. I find that in a case like the present one the dismissal from service will be disproportionate punishment. I find that if the workman be reinstated in service without back wages and if his increment be withheld for next three years that will meet the ends of justice.

10 In the result I find that in action of the management to Nabakajor Colliery in dismissing Bhunath Bouri, Line Mazdoor w.e.f 8-6-86 was not justified. The workman shall be reinstated in service without back wages within three months from the date of publication of the award and he shall work for next three years at the last pay drawn before his dismissal. The entire back wages of the workman stands forfeited as penalty. This order shall not affect the seniority of the workman in any way and also in giving him increments after completion of three years from the date of reinstatement.

This is my award

N K SAHA President Officer

क्रमांक २८ असाम ४४

प्राप्ति २१.८.१९९२—जीवायिक विवाद अधिकार ११७ (१९४७ का १११) का दाय १७ व अन्तर्गत म वर्ष १९८६ तक अपनी आँख मैसन इंजिनियर व प्रबन्धक व संस्कारक व नियंत्रक विवाद विवरण व नियंत्रक विवाद अधिकार अधिकारी अमन्तराला विवाद का दाय ११७ व असाम ४४ का दाय १७-१२ व असाम ४४

दाय ११७-१२ व असाम ४४ का दाय ११७-१२ व असाम ४४

New Delhi the 28th July 1992

SO 2210—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Govt Industrial Tribunal Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madhaipur Colliery of M/s E C Ltd and their workmen which is received by the Central Government on 23-7-92

[No L-22012/212 89 IR (C II)]

S C SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL, ASANSOL

REFERENCE NO 190

PRESIDENT.

Shri N K Saha, Presiding Officer

PARTIES

Employers in relation to the Management of Madhaipur Colliery of M/s E C Ltd

AND

Their Workmen

APPEARANCES

For the Employers Shri P Banerjee Advocate

For the Workman Sri B Kumar Joint Secretary of the Union

INDUSTRY Coal STATE West Bengal

Dated, the 13th July 1992

AWARD

The Government of India in the Ministry in exercise of the powers conferred on them by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No L-22012(212)89-IR(C II) dated the 27th December 1989

Schedule

Whether the son of the Management of Madhaipur Colliery of M/s Eastern Coalfields Ltd, in superannuating Sri Kesho Mistry, Strimmer on 2nd from 13-10-1987 is justified? If not to what relief the workman concerned is entitled?

2 The case of the unionist is that the concerned workman Sri Kesho Mistry is Strimmer of Madhaipur Colliery under M/s Eastern Coalfields Ltd. His date of birth is 3-10-1946. The said workman is an illiterate person. His date of birth was wrongly recorded in the office record. He applied before the management for reclassification of his age. But violating the rules he was served with a notice of superannuation on 13-5-87 stating that he would attain the age of 60 years on 13-10-87. The management being persuaded subsequently advised the workman to appear before the Screening Committee on 22-6-87. Accordingly he appeared before the Screening Committee and the said committee advised him to appear before the Age Assessment Committee at Santorini Hospital. But without getting the report from the Age Assessment Committee the workman was superannuated w.e.f 1-1-87.

The attempts of conciliation ended in failure. The matter was sent to the Ministry of Labour Government of India and ultimately the dispute has been referred to this Tribunal for adjudication.

3 The management has filed written objection contending inter alia that at the time of entry in service the workman declared his year of birth is 1927 and his same was duly entered in the B Form Register maintained by the erstwhile management and it was only recorded when the management of Eastern Coalfields Ltd prepared fresh B Form Register. In 1986 the employer issued Service Excerpts to all its workmen in duplicate asking them to verify its particulars and return the same with objection if any. The present workman raised objection through Service Excerpts and accordingly the case as referred to the Age Determination Committee. After consideration of all the relevant aspects the said Age Determination Committee assessed his age and found the entry in B Form Register is correct. Accordingly the workman was superannuated. He is not entitled to get any relief in this case.

4 Admittedly the concerned workman Sri Kesho Mistry was a Strimmer of Madhaipur Colliery under Eastern Coalfields Ltd. The workman claims that his date of birth is 13-10-1946 and according to the management the workman was aged 42 years on the date of entry of his service on 13-10-69. Sri P Banerjee the learned Advocate for the management has taken me through all the Exhibits M-1 to M-7 to convince that the age of this workman was correctly recorded in the 'B' Form Register. So the workman is not entitled to get any relief.

Sri Banerjee has urged before me that only through Service Experts at the fag end of his service career, the workman raised objection regarding his age and after that he was duly examined by the Age Assessment Committee and the said Committee assessed his age which is in conformity with the B Form Register. With due respect to his contention I find that this workman is an illiterate person. He raised objection when he got the opportunity to raise such objection through Service Experts. There is nothing on the record to show that before issue of such Service Experts this workman had any communication or information regarding the recording of date of birth in 'B' Form Register. So it cannot be said that there was any delay in raising the objection. From the record it appears that at best there was a clerical error on the part of the workman by the Age Determination Committee in assessing his age. There is nothing to show that there was any thorough scientific examination of the workman to determine his age. So I am unable to accept the view that the Age Determination Committee rightly assessed the age of the concerned workman. Consequently I hold that the action of the management of Madhaipur Colliery in superannuating Sri Kesho Mistry w.e.f 13-10-87 was not justified. So the management shall refer

the concerned workman to Apex Medical Board to determine his age on the basis of scientific examination and—

- (i) If the Medical Board finds that the concerned workman attained the age of 60 years on 13-10-87 then the workman shall not get any relief in this case.
- (ii) If the Medical Board finds that the concerned workman was less than aged 60 years on 13-10-87 but in the meantime has attained the age of 60 years, then the workman shall get the full wages for the period from the date 13-10-87 to the date of his attaining the age of 60 years.
- (iii) If the Apex Medical Board finds that the workman has not yet attained the age of 60 years, then the workman shall be immediately reinstated in service and shall be paid all the back wages from 13-10-87 to the date of his reinstatement.

This is my award.

N. K. SAHA, Presiding Officer.

नई दिल्ली, 23 जून 1992

का.प्रा. 2211.—औद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपरेशन और हड्डिया के प्रबंधनत के सबद्ध नियोजकों और उनके कर्मकारों के लिए, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक प्रधिकरण, हैदराबाद के पवपाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संज्ञा एल-42012/139/86-ख-II(बी)]

मुमाल शर्मा, ईस्क प्रधिकारी

New Delhi, the 28th July, 1992

S.O. 2211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/239/86-D.II (B)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri G. Krishna Rao, B.A., B.L., Industrial Tribunal.

Fourteenth day of July Nineteen hundred Ninety two
Industrial Dispute No. 48 of 1988

BETWEEN :

The Workmen of Food Corporation of India, Kurnool
(Andhra Pradesh). Petitioner.

AND

The Management of Food Corporation of India,
Kurnool. Respondent.

This case is coming for final hearing before me in the presence of M/s. G. Bikshapathi, G. Vidya Sagar, V. Viswanath, G.I./92—6

nathan, N. Vinesh Raj and K. V. Bhaker, Advocates for the Petitioner workmen and Sri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material Papers on record and having stood over for consideration till this day, the Court passed the following :

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/139/86-D.II(B) dt. 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

'Whether the action of the management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri S. Thahir Hussain Ex-Watchman is justified ? If not, to what relief, the workman concerned is entitled to ?'

The said reference was registered as I.D. No. 48 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1972-77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workmen from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange.

The relevant Gazette Notification is extracted below :

"Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retrained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is submitted that the Petitioner worked as Watchman from 7-2-1976 to 5-5-1977 and his services were dis-engaged from 6-5-1977 without any notice or any valid reasons. Ever since the dis-engagement, the Petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officers sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law, rejected the case of reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India the Petitioner filed Writ Petition No. 18893/1987. The Hon'ble High Court of Andhra Pradesh, by an order dated 3-2-1988 allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned Single Judge, the management has filed Writ Appeal No. 922/1988 and the same was also dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra

Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of disengagement is illegal and arbitrary. The petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workmen appointed subsequent to the Petitioner's appointment were continued but the services of the petitioner were terminated. The alleged action is also violative of Section 25-H of Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the Petitioner is unemployed and could not secure any alternative employment in spite of his efforts. The Petitioner is facing severe financial difficulties due to unemployment. There are no latches on the part of the petitioner ever since the disengagement in May, 1977. The petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore, prayed that the Hon'ble Court may be pleased to hold that the disengagement of the Petitioner with effect from 6-5-1977 is illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent-Management to reinstate the Petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 7-2-1976 to 4-5-1977 depending upon the exigency of work. The petitioner did not work continuously for 240 days. The provision of Sec. 25-F of the Industrial Disputes Act does not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The Petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement regular appointment in the F.C.I. That apart the petitioner's name was not sponsored by Employment Exchange for considering for regular employment at that time. The Petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the Petitioner made several representations. In fact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Headquarters Gazette Notification does not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W.1 was examined for the petitioner and the petitioner's side was closed. Exs. W1 to W8 were marked for the Petitioner. M.W.1 was examined for the Respondent and the Respondent's side was closed. Exs. M1 and M2 were marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri S. Thahir Hussain Ex-Watchman is justified ? If not, to what relief, the workman concerned is entitled to ?

6. POINT.—The admitted facts of the case are that the Petitioner was appointed temporarily on daily rate wages on 7-2-1976 and worked in the Respondent Corporation till 5-5-1977 with intermittent breaks and the services of the petitioner were terminated from 5-5-1977. The case of the petitioner was that in spite of his repeated request, the Respondent Corporation did not reinstate him and therefore in 1986 he resorted to the Conciliation proceedings and the conciliation failed and that the Petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated into service. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I.D. Act are not applicable to this case and the Petitioner is not entitled for re-instatement in this case. The question that is to be decided in this case is whether the petitioner worked for more than 240

days for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25 of the I.D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross-examination MW-1 stated the Petitioner worked in the Respondent Corporation from 7-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service, though he denied the suggestion that the petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M.W.1 that the Petitioner worked for about 14 months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks, which leads to the inevitable inference that the petitioner worked continuously for more than 240 days in view of the evidence of M.W.1 when he categorically deposed that the petitioner worked in the Respondent Corporation from 7-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I.D. Act would come into play as the removal of the petitioner from service amounts to retrenchment as defined in Section 2(oo) of the I.D. Act, and the Respondent-Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation as contemplated under Section 25-F of the I.D. Act. It is admitted by MW-1 that at the time of dismissing the Petitioner from service one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the Petitioner also was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I.D. Act before retrenching the petitioner from a service. It is pertinent to note that in Ex. M-1 in a clarification dt. 7th September, 1977 for the office notification dt. 4-2-1976 issued by the Food Corporation of India, Head Office, New Delhi, it is stated that "it has also come to the notice that some persons have been appointed after 25-1-1976 on daily rate temporary basis without being sponsored beyond 89 days that since the continuance of such persons is in contravention of the statutory provisions of the Employment Exchange Act 1959 and the provisions in the Staff Regulations, the services of such persons should be terminated immediately and they may be paid simultaneous the retrenchment compensation if they have worked for 240 days or more during the period of last 12 months as per the provisions of I.D. Act". So in view of this notification also it is to be noted that the department is aware of the fact that the Respondent has to pay retrenchment compensation to the workmen who are to be removed from service when they worked for 240 days continuously. In the present case the Respondent Corporation did not comply with the mandatory provisions of Section 25-F of the I.D. Act in paying the retrenchment compensation. It is contended by the learned counsel for the Respondent that as against the judgement in W.A. No 174/88 the Respondent Corporation filed a Civil Appeal No 5178-79 of 1990 in the Supreme Court of India and in the order of Supreme Court in the said Civil Appeal, it is stated that "we are of the view that the impugned order of the High Court should be understood as a direction to the Government to consider the matter on the merits after hearing both sides and to pass an appropriate order, and not as a direction to make a reference without regard to the merits, the impugned order shall stand modified as indicated above. It is contended by the learned counsel for Respondent that that in view of the order of the Supreme Court in the said Civil Appeal the Government of India has to hear both sides before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent Corporation before referring the matter to this Tribunal and therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent Corporation, this plea was not taken and raised in the

counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both parties before referring the matter to this Tribunal. On the other hand it is to be noted that the order in Ex. M2 was dt. 31-10-1990 in the said Civil Appeal No. 5178-79/90. So it is clear from the documentary evidence in Ex. M2 and the evidence of M.W.1 when he disposed that as against the judgment in W.P. No. 18177/87 the Respondent Corporation filed Writ Appeal No. 174/88 on the file of the High Court of A.P. and the same was dismissed confirming the judgement in Writ Petitioner that as against the judgement in W.A. No. 174/88 the Respondent filed Civil Appeal No. 5178-79/90 on the file of the Supreme Court of India, that Ex. M2 is the photostat copy of the order dt. 31-10-1990 in the said Civil Appeal No. 5178-79/90 that the order in Ex. M2 was long subsequent to the date of the reference i.e. 29-4-1988, made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent Corporation. It is in the evidence of M.W.1 that after the judgement of the High Court in W.P. No. 18177 of 1987 the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal. It is to be noted that M.W.1 deposed that he has been working as Assistant Manager in the Respondent Corporation since 1958 and that he has been working at Kurnool since June, 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour by its Order dt. 29-4-1988 by which time M.W.1 was not working in Kurnool office and so it cannot be said that M.W.1 has got the personal knowledge whether the Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M.W.1 to say that he is speaking from out of the record available as he was not having the personal knowledge of the matter in respect of things that have happened prior to June 1990 in this case. So the statement of M.W.1 that after the judgment of the High Court in W.P. No. 18893/87 the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal, cannot carry any weight. Therefore, I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. So in view of my above discussion, I am of opinion that the petitioner is entitled for the relief of reinstatement with continuity of service but without back wages under the facts and circumstances of the case and in view of the admission made by the petitioner in his evidence as WW-1 that he may be reinstated without back wages. Hence I answer the point accordingly.

7. In the result an Award is passed directing the Respondent Corporation to reinstate the Petitioner into service with continuity of service, but without back wages. The Respondent Corporation is further directed to reinstate the Petitioner within one month from the date of publication of this Award failing which the petitioner is entitled to recover the wages from the date of publication of this Award. There will be no order as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 14th day of July, 1992.

G. KRISHNA RAO, Industrial Tribunal

Appendix of Evidence

Witnesses examined

for the Workmen.

WW 1 S. Thahir Hussain.

Witnesses examined for the Management :

MW 1 P. J. Chella Doria

Documents marked for the Workmen

Ex. W1 7-2-76 Appointment order dt. 7-2-1976 issued to S. Thahir Hussain by the District Manager F.C.I., Kurnool.

Ex. W2 6-6-77 Service certificate dt. 6-6-77 issued to S. Thahir Hussain by the Asst. Manager (C) F.C.I., Thimmancherla.

Ex. W3 6-5-81 Photostat copy of the letter dt. 6-5-1981 of Dist. Manager, F.C.I., Kurnool.

Ex. W4 3-4-86 Representation dt. 3-4-86 made by S. Thahir Hussain to the Asst. Labour Commissioner (C) Hyderabad, Hyd.

Ex. W-5/1-10-86—Failure of conciliation report dated 1-10-1986.

Ex. W6 Postal acknowledgement.

Ex. W7 Postal acknowledgement.

Ex. W8 25-1-89 Photostat copy of the office order nil by the District Manager, F.C.I., Kurnool A.P. to Sri. U. Ramanjeeyulu, daily rated watchman.

Documents marked for the Respondent Management.

Ex. M1 11-2-76 Photostat copy of the Circular No. 4-B/75 dt. 7th September, 1977 off-C.I. HO, New Delhi.

Ex. M2 31-10-90 Photostat copy of the order of the Supreme Court of India in Civil Appeal No. 5178-79/90.

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2212.—ओद्योगिक विवाद प्रविनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधताल के सबूत नियांकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक प्रधिकरण तमिलनाडु मद्रास के प्रताठ को प्रकाशित करती है, जो केन्द्रीय सरकार की 27-7-92 को प्राप्त हुआ था।

[संख्या एल-12012/183/91-प्राई आर (बी-III)]
सुभाष चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu, Madras, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 27-7-1992.

[No. L-12012/183/91 IR (BII)]
S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Thursday, the 30th day of April, 1992

THIRU M. GOPALASWAMY, B.Sc., B.L.,
Industrial Tribunal

INDUSTRIAL DISPUTE NO. 45 OF 1991

(In the matter of the dispute for adjudication under section 10(1) (d) of the Industrial Disputes Act, 1947 between the workman and the management of State Bank of India, Madras.)

Between

The workman represented by

The General Secretary,

State Bank Workmen Staff Union,

62-A, Gengu Street, Egmore, Madras-600008.

And

The Chief General Manager,
State Bank of India, LHO,
21, Rajaji Salai, Madras-600001.

REFERENCE :

Order No. L-12012/183/91-IR (B-III), dated 31-7-91.
Ministry of Labour, Government of India.

This dispute coming on for final hearing on Tuesday, the 7th day of April, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl.D. Murugesan and R. Achuthan, Advocates appearing for the Workman and the Management being absent, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This dispute between the workman and the management of State Bank of India, LHO, Madras-1 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of Tamil Nadu in its Order No. L.12012/183/91-IR.B.III, dated 31-7-1991 of the Ministry of Labour; for adjudication of the following issue :

"Whether the management of State Bank of India is justified in terminating the services of Shri P. Rama-swamy, Messenger/Driver with effect from 24-7-84 ? If not, to what relief the workman is entitled to ?".

2. The Petitioner-worker states as follows : The Petitioner was given employment at the Regional Office, Coimbatore of the Respondent as Messenger-cum-driver on and from 21-10-1983. He has worked for 67 days in 1983 and 113 days in 1984. He was denied work from 28-4-1984 by the Regional Manager without giving reasons. Repeated requests by the Petitioner were of no avail. The Respondent-State Bank of India has been regularly appointing employees on a temporary basis and subsequently regularising them. The Petitioner was also appointed on a temporary basis on 21-10-1983 when he was 35 years old. He has served for 180 days efficiently. The Respondent has taken a decision to give regular appointment to temporary employees who have put in not less than 90 days of work on a temporary basis. However, the Respondent did not give effect to the said policy and failed to appoint the Petitioner in a permanent vacancy, even though he was called for an interview on 20-4-1988. The Respondent seems to have acted on a settlement between the Respondent and SBI staff Federation, reached on 17-11-87 prescribing certain conditions for making regular appointment of temporary employees. In that settlement, there seems to be a condition that a temporary employee who has crossed a certain age limit is not eligible to be appointed regularly. Such a clause on age in the settlement reached under section 18(1) of the I.D. Act. cannot abridge the right of the Petitioner to get regular appointment in terms of the I.D. Act. Petitioner raised a dispute under section 2-A of the I.D. Act before the Labour Commissioner (Central), New Delhi. But conciliation has failed.

3. The Respondent was served notice but has remained absent and hence it was set ex parte.

4. The point for determination that arises for consideration is as follows :

"Whether the management of State Bank of India is justified in terminating the services of Shri P. Rama-swamy, Messenger/Driver with effect from 24-7-84 ? If not, to what relief the workman is entitled to ?".

5. The Petitioner has examined himself as WW-1. Exs. W-1 to W-6 were marked. The fact that the Petitioner was employed on a temporary basis by the Regional Office, Coimbatore of the Respondent-State Bank of India is admitted. Petitioner has worked on a temporary basis for 180 days only as revealed by Ex. W-1 certificate. In 1984, in which he was denied employment he has worked for 113 days as Messenger-cum-Driver. The Petitioner's application to the Conciliation Officer is marked as Ex. W-2. Conciliation Failure Report is Ex. W-4.

6. In the course of arguments, the Petitioner's learned counsel referred to Section 25-B coming under Chapter V-A of the I.D. Act, 1947, for the purpose of considering whether the Petitioner has to be deemed to have put in continuous service for one year or six months, as the case may be.

7. The State Bank of India and the Staff Association have entered into a Section 18(1) Settlement which is incorporated in Ex. W-6 circular. Under this settlement, temporary employees who have put in a minimum of 70 days and more of service in the course of three years after 1-7-1975 become eligible to be considered for permanent appointment. But the settlement also provides upper age limit of 26 years as on the date of the initial temporary appointment. This Petitioner who had completed 35 years of age when he was temporarily appointed (initially) on 21-10-1983 becomes disqualified by this age restriction fixing the maximum age at 26. I believe that the Industrial Disputes Act does not over-ride the requirement of age qualification which is fixed according to law and in terms of a settlement under section 18(1) of the Industrial Disputes Act.

8. The Petitioner's learned counsel referred me to the decision in Manickam-versus-State Bank of India decided by the Madras High Court and reported as 1991—I—L.L.J. 547. In that case, the worker relied upon discrimination between him and another worker both of whom were similarly placed, in the matter of absorption of the worker in a permanent post. The question of age qualification was not an issue in that case. I therefore hold that in the instant case before us the question of age bar is a material one and that it has to be answered against the Petitioner herein. As a person who has completed 26 years of age on the date of initial appointment in a temporary capacity, the Petitioner becomes ineligible for being appointed in a permanent post in terms of Ex. W-6 settlement which has to be upheld as a valid settlement under the I.D. Act. Therefore I hold that the Petitioner is not entitled to be reinstated or appointed in a permanent post, under the Respondent-Bank. This point is answered accordingly.

9. In the result, industrial dispute is dismissed. No costs.

Dated, this 30th day of April, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal.

WITNESSES EXAMINED

For Workman :

W.W 1 — Thiru P. Ramasamy.

For Management : None

DOCUMENTS MARKED

For Workman :

Ex. W-1/12-8-88 — Certificate of temporary service issued to the workman Thiru P. Ramasamy (Xerox copy)

W-2/25-8-88 — Letter from the workman to the Chief Labour Commissioner (Central), New Delhi regarding his re-employment in the Management-Bank (xerox copy)

W-3/8-4-89 — Letter from the workman to the Asstt. Labour Commissioner (Central)-II, Madras. (Xerox copy)

W-4/27-5-91/3-6-91—Conciliation Failure Report (Xerox copy)

W-5/4-10-78 — Award in I.D. 11/77 (xerox copy)

W-6/26-12-87 — Circular No 52 of State Bank's Staff Union (Madras Circle), Madras regarding settlement on absorption of temporary employees (Xerox copy)

For Management : Nil

नई विरासी, 28 जुलाई, 1992।

का.प्रा. 2213.—बीदीगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साझे मालाबार ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट बीदीगिक विवाद में अम व्यायालय, कोर्टीकोडे के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[संख्या एल-12012/271/90-प्राई आर (बी-III)]

मुख्य चन्द शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Kozhikode as shown in the Annexure in the industrial dispute between the employers in relation to the management of South Malabar Gramin Bank and their workmen, which was received by the Central Government on the 27-7-92.

[No. L-12012/271/90-IR(B.III)]

S. C. SHARMA, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Dated this the 9th day of July, 1992

PRESENT :

Shri K. G. Gopalakrishnan, B.A., B.L., Presiding Officer
I.D. (C) 6/91

BETWEEN

The Chairman, South Malabar Gramin Bank, Head Office, Malappuram-676505, Kerala .Management

AND

Shri C. K. Chandran S/o Kunhiraman, Chottiyan Kandy House, P.O. Perambra, Dist. Kozhikode, Kerala—Workman.

REPRESENTATIONS :

Sri K. V. Sachidanandan, Advocate, Calicut—For Management.

Sri P. M. Padmanabhan, Advocate, Calicut—For Workman.

AWARD

By the Order No. L-12012/271/90-IR.B.III dated 8-10-1991 the dispute between the management of South Malabar Gramin Bank and their workmen in connection with the termination of service of a Messenger by name C. K. Chandran was referred to this Court for adjudication by the Government of India under Section 10 of the Industrial Disputes Act.

2. After the receipt of the reference order in this court both the management and the workman entered appearance and filed claim statements. The brief averments in the statement filed by the workman are as follows:—The workman was taken in the service of the management bank as Messenger on 11-3-1986 on daily wage basis and as Messenger he has worked in various branches of the management bank. While so without assigning any reason what-so ever his service was terminated by the bank on 5-8-1989. At the time of this termination the workman has worked altogether 322 days. Thus the workman having worked for more than 240 days he has become a permanent employee of the manage-

ment bank and hence the management has no right to terminate his service like this. If at all the service of the workman has to be terminated that can be done only as provided in Section 25F of the Industrial Disputes Act by giving the workman one months notice pay in advance and retrenchment compensation. As this has not been done the termination is illegal and as such the worker is entitled to be reinstated with back-wages and continuity of service as if there is no termination. Hence an award may be passed directing the management bank to reinstate this worker in service with backwages from 5-8-1989 and with continuity of service.

3. The brief averments in the statement filed by the management are as follows:—It is true that the workman has worked as a Messenger in the bank on daily wage basis. But the allegation in the statement filed by him that he has altogether worked 322 days is false. In fact he has worked only just 215 days that too intermittently. Thus as he has worked only 215 days the management has every right to terminate his service as the Industrial Disputes Act will have no application in such cases. Hence an award may be passed upholding these contentions of the management.

4. No oral evidence has been adduced. Documentary evidence consists of Ext. M1.

5. The following points are formulated for decision:

- (1) Whether the action of the management bank terminating the service of the workman is legal?
- (2) Whether the workman is entitled to any relief?
- (3) Result?

6. Point No. 1:—It is the admitted case of both sides that the workman started working as a Messenger in the management bank with effect from 11-3-1986 on a daily wage basis. It is also admitted case that his service was terminated with effect from 5-8-1989. Now this action of the management terminating his service is questioned by the workman contending that he has worked for more than 240 days in a year and as such his service can be terminated only as provided in section 25F of the Industrial Disputes Act. This case of the workman that he has worked for more than 240 days in a year is disputed by the management contending that altogether he has worked only 215 days. But this stand of the management is absolutely wrong since Ext. M1 which is a statement filed by the management showing the number of days he has worked clearly reveals that from 12-8-1988 to 5-8-1989 he has worked 215 days. Or in other words Ext. M1 shows that during 12 months in between 12-8-1988 to 5-8-1989 the worker has actually worked 215 days excluding Sundays and other holidays. Now the Supreme Court has held in the decision reported in 1986-LIC-98 while counting 240 days for the purpose of section 25B, the intervening holidays and Sundays also should be taken into account. This legal proposition is not disputed by the counsel for the management. In any event between 12-8-1988 to 5-8-1989 definitely there will be 40 Sundays and when those 40 days are also added to 215 days viz., the days he has actually worked it will be more than 240 days. Thus from the document produced by the management itself it is evident that the workman has worked for more than 240 days in a year viz., from 12-8-1988 to 5-8-1989. Thus as the worker has worked for more than 240 days in a year he will be deemed to have one year continuous service in view of Section 25B of the Industrial Disputes Act and as such his service can be terminated only as provided in Section 25F of the Industrial Disputes Act by giving him one month's notice pay and retrenchment compensation. Admittedly this statutory provision has not been complied with before terminating his service. So it has to be held that the action of the management terminating the service of the workman is illegal.

7. Point No. 2:—Now it is found in answer to Point No. 1 that the action of the management terminating the service of the workman with effect from 5-8-1989 is illegal since it being in violation of Section 25F of the Industrial Disputes Act. Now the legal position has been well-settled by series of decisions that an order of termination without complying

with section 25F of the Industrial Disputes Act will be void in law and hence in such cases the employee is entitled to be reinstated with backwages and continuity of service as if there is no termination at all. Hence as stated earlier the service of the workman was terminated without complying with Section 25F of the Industrial Disputes Act. So much so the workman is entitled to be reinstated with backwages and continuity of service as if there is no termination at all.

8. Point No. 3:—In the result an award is passed directing the management bank to reinstate the workman in service with backwages and continuity of service.

9. This award will come into force 30 days after its publication in the Official Gazette.

K. G. GOPALAKRISHNAN, Presiding Officer

APPENDIX :

Witnesses examined on either side :—

NIL.

Documents marked on the side of the Workman :—
NIL.

Documents marked on the side of the Management:—

Ext. M1—Details of days worked in various branches of the management concern by the worker.

मध्य पिल्ली, 29 जुलाई, 1992

का आ 2214—ओर्डोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रमुखण में केन्द्रीय सरकार, भारतीय स्टेट ब्रैक ए प्रबंधन के मवद्व नियांकों और उनके कम्पनीरों के बीच, अनुबंध में निर्दिष्ट ओर्डोगिक विवाद में ओर्डोगिक अधिकारण, कालम के पचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-7-92 को प्राप्त हुआ था।

[संख्या एन-12012/54/90-आइ आर (बा-III)]
मुख्य चन्द गर्मा, डेस्क प्रधिकारी

New Delhi, the 29th July, 1992

S.O. 2214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 28-7-1992.

[No. L-12012/54/90-IR(B-III)]
S. C. SHARMA, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,

KOLI AM

(Dated, this the 23rd day of July, 1992)

PRESENT :

Sri. C. N. Sasidharan, Industrial Tribunal.

IN

INDUSTRIAL DISPUTE NO. 126/90

BETWEEN

The Regional Manager, Region II, State Bank of India, Regional Office, Trivandrum-695033.

(By Sri G. Krishnan Nair and Sri R. Somanathan, Advocates, Trivandrum).

AND

Sri Thomas Jose, Padiyara House, Manimala P.O., Kottayam District, Kerala.

(By S/S. M. RamaChandran and P. V. Abraham, Advocates, Irinakulam).

AWARD

This industrial dispute has been referred for adjudication by Government of India as per Order No. L-12012/54/90-IR B.III dated 25-6-1990

The issue for adjudication is :

SCHEDULE

‘Whether the action on the part of the management of State Bank of India in dismissing Sri Thomas Jose as Clerk w.e.f. 10-6-1987 is legal and justifiable ?

If not, to what relief the workman is entitled to ??’

2. Sri Thomas Jose, the workman in this case, was dismissed from the State of India. The contentions of the workman are briefly as under : It is stated in the claim statement of the workman that he had been employed as Typist-cum-Clerk since the year 1975. He had been discharging his duties faithfully and his service record would reveal that his service under the management had been blemished less and clean. He had always fared well in the deposit mobilisation work. But during October 1985 he had become victim of an indiscretion for a moment in the circumstance of pressing necessity. He had taken a sum of Rs. 3,000 from an account intending to recoup it immediately. He had owned up the action and had recouped the loss. It is stated that he had no idea to make any wrongful loss. The management however resorted to disciplinary action and a formal enquiry had been held. The enquiry officer reported that the workman is guilty. He did not raise any frivolous or untenable contentions in the enquiry. Though the workman prayed and pleaded for mercy to forgive the solitary lapse, the management imposed the capital penalty and as per order dated 6-5-1987 he was dismissed from service. The appeal filed by him was also rejected. According to the workman approach of the management was unjustified. The management has not considered his past service conduct and other circumstances in imposing the punishment of dismissal. He has further stated that he has not secured any alternate employment. According to him he deserves a chance to be reinstated in service with all benefits because he had committed a lapse without any premeditation.

3. The management while opposing the case of the workman has advanced their contentions in the reply statement which are briefly as under : On 19-10-1985 he workman was officiating as cash officer of the Kangazha branch of the management Bank one Sri P. S. Haridas was having S. B. Account No. 36 in that branch. This account was in operative for a long time. On 19-10-1985 the workman himself prepared a S. B. withdrawal slip for Rs. 3,000 from the Account No. 36, forged the signature of the customer Sri Haridas, himself posted the withdrawal in the ledger and with that forged document he withdrew a sum of Rs. 3,000 and misappropriated the money for himself. Procedure to be followed in debiting inoperative account has not been followed by him in his motivated and calculated action to defraud the Bank. The external auditors of the Bank on 20-10-1986 found difference of Rs. 3,000 between the S.B. ledger balance and general ledger balance which was located in S.B. Account No. 36. The fraudulent withdrawal of the workman was revealed on further scrutiny. He had admitted before the enquiry officer, the acts and the amount of Rs. 3,000 with interest was also recovered. The above acts of the workman amounts to gross misconduct in terms of paragraph 321(4)(J) of the Sastri Award read with paragraphs 18—28 on Desai Award. Hence disciplinary action has been initiated against him. An enquiry has been ordered and in the enquiry the workman admitted the charge and pleaded mercy. The enquiry officer found the workman guilty of the charges. Considering the gravity of the charges the disciplinary authority

imposed the supreme penalty of the dismissal without notice. He was afforded a personal hearing also. The appeal filed by the workman before the appellate authority was also rejected. According to the Bank all actions taken by it are legal, valid and proper. The workman has misused the confidence and trust reposed on him by the Bank. The alleged previous conduct, length of service etc. cannot be termed extenuating circumstance when considering the admitted and proved charges committed by the workman. Public confidence enjoyed by the Bank will be dwindled if the Bank is manned by persons like the workman. There is no mitigating circumstances for not penalising the employee or for imposing any lesser punishment. The punishment is not at all disproportionate considering the admitted charges proved against the workman. According to the management the workman is not entitled to reinstatement or any other relief in this reference.

4. The workman was dismissed from service of the management on the basis of a domestic enquiry finding. The validity of the domestic enquiry was not disputed by the workman. The enquiry report has been marked as Ext. M1 without examining the enquiry officer as consented to by the workman. As matters stand now the only question to be considered is as to whether any interference is called from this Tribunal in the punishment of dismissal imposed by the management.

5. The only question now remains for consideration is whether the punishment of dismissal inflicted by the management is excessive or disproportionate to the gravity of the misconduct proved against the workman. The learned counsel for the workman would contend that the workman who had exemplary record of service for 16 years and had received appreciation of the work he had done, committed the offence in a weak moment and he had not thought of making any personal gain at the expense of others. It was also submitted that the workman had admitted his guilt, made good the amount and pleaded for mercy. According to the learned counsel the workman was never charge sheeted for any misconduct earlier and also that he had not raised any frivolous or false contentions in the enquiry and that the management had any financial loss. In these circumstances the learned counsel would contend that the extreme punishment of dismissal is too excessive and the management has not considered any of these circumstances while awarding punishment. On the other hand the learned counsel for the management would argue that the workman while holding an office of trust has misused the confidence and trust reposed on him by the Bank and the continuance of the workman who had forged the signature of a customer and misappropriated money if allowed to continue in a banking institution, public confidence enjoyed by the Bank would be dwindled. According to the learned counsel the past unblemished service, the admission of the guilt and the repayment of the amount misappropriated are not at all mitigating circumstances to award a lesser punishment considering the gravity of the misconduct proved against him.

6. The misconduct of misappropriation of money by forging the signature of a customer by the workman is not in dispute. He has admitted the misconduct, explained the circumstances that in a weak moment of pressing necessity he had taken Rs 3,000 from an account and pleaded for mercy even before the management ordered a domestic enquiry. As a matter of fact at the time of issuing charge memo there was no loss to the management. The management has no case that the matter came to the knowledge of the account holder from whose account money was drawn by the workman. In the domestic enquiry the enquiry officer found the workmen guilty of the charges on the admission of the workman about the misconducts. The admission of the misconduct, remittance of the amount misappropriated and pleading for mercy show that the workman had regretted about his guilt. That also shows his remorsefulness. Further, by making good the amount after admitting the misconduct the workman earnestly wanted to avoid any monetary loss to the Bank and also to save the good image of the Bank. It is true that admitting the misappropriation and remitting back money misappropriated are not mitigating circumstances for awarding a lesser punishment. But the fact remains that this workman admitted his guilt immediately after the offence and

made good the amount and pleaded for mercy. This is the first offence of the delinquent who is having about 16 years of unblemished service. Having regard to all these circumstances I would hold that the extreme punishment of dismissal is too harsh and not justified.

7. On an anxious consideration of all the aspects particularly the difficulty in getting a job in these days I am of the view the interest of justice would be met by affording the workman one more opportunity to reform himself and to prove his worthiness, integrity and loyalty. However, the workman cannot be let off without any punishment considering the gravity of the offence. He has been out of employment since 1987. It seems to be that the pain and anguish suffered by him due to the loss of job and denial of back wages and other monetary benefits for the broken period of service would not be adequate punishment for the misconduct in question. Subject to that he should be directed to be reinstated in service. However, his past service shall be counted for all other benefits. In this regard I make it clear that the workman shall not be given a posting in the Kangazba branch where he was working or in any other nearby branch of the management Bank. He shall be given a posting in a distance place for sometime so that his past misconduct could be kept out of the knowledge of the general public and thereby the interest of the Bank can be protected. It is also made it clear that he shall be reinstated as Typist Clerk only and not be entrusted with cash.

8. The above view is supported by a decisions of the Supreme Court in Scooter India Ltd. V. Labour Court, Lucknow (AIR 1989 SC. 149) In that case the workman was charge sheeted as per charge memos on three different occasions and the charges framed against him pertained to acts of major misconduct. All the charges were held proved in the enquiry. However, the Labour Court directed the workman to be reinstated in service with 75 per cent back wages. The High Court sustained the Award of Labour Court by advertizing to Section 6(2A) of U.P. Industrial Disputes Act (1947) which is analogous to Section 11-A Industrial Disputes Act, 1947. The matter finally came before Apex Court and the court confirming the Award of Labour Court held thus in paragraph 7 last :—

"It cannot therefore be said that the Labour Court had exercised its powers under Section 6(2A) of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2A) of the Act."

The above decision according to me equally applies to the facts and circumstances of the instant case.

9. The learned counsel for the management placed reliance on two decisions in support of the argument that the punishment of dismissal does not call for any interference. The first authority cited is of the High Court of Gujarat in Gujarat State Road Transport Corporation V. Jamnadas Bechav Bhai (1983 LAB IC 1349). In that case a bus conductor was found collecting money without issuing ticket. The court found that the dismissal was proper. This case according to me has no application here because in the instant case the workman admitted the guilt and pleaded for mercy after having made good the amount. The second authority cited is the decision of the Calcutta High Court in Wimco Sramik Union V. Seventh Industrial Tribunal. In that case the workman was dismissed for theft which was proved in the enquiry. The court found that no interference was called for on the ground that the workman had rendered long period of unblemished service and stolen property was worth only Rs. 150. This decision also according to me is distinguishable. The facts are not similar. The workman before me had taken the amount in a weak moment due to pressing necessity and

later admitted the misconduct, remitted the amount and prayed for mercy. In the light of the decision of the Apex Court (Supra) it is only proper to afford an opportunity to the workman to reform himself and prove to be a disciplined and loyal employee. Hence the decisions of Gujarat High Court cited by the learned counsel for management have no application here.

10. In the result, the reference is answered by passing an Award quashing the order of termination and directing the management to reinstate Sri Thomas Jose in the service of the Bank in the terms and conditions stated in paragraph 7 above.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Document marked on the side of the Management :
Ext. MI-series. Enquiry proceedings.

तह विली, 22 जुलाई, 1992

का या 2415—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की शरण 17 के अनुसार मे, केन्द्रीय सरकार, मैसर्स भारत कोकिं को लि का भीरा धोत्र की बशरी कॉलियरी के प्रबंधन के सबूत नियोजकों और उनके कर्मकारों के बीच, अनुबंध मे निर्दिष्ट औद्योगिक विवाद भ केन्द्रीय सरकार औद्योगिक अधिकरण, (म 2) धनबाद के प्रबंधन की प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[मध्या एन-24012(60)/82-डी-4 (बी)]
बी के बैंगोपालन, ऐस्क प्रधिकारी

New Delhi, the 22nd July, 1992

S.O. 2215.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Baraee Colliery Bhowra Area of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20th July, 1992.

[No. L-24012(60)/82-D.IV(B)]

V. K VENUGOPALAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESFNT

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 38 of 1983

PARTIES :

Employers in relation to the management of Baraee Colliery, Bhowra Area of B.C.C.L., District Dhanbad

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary, R.C.M.S.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad the 10th July, 1992

AWARD

The Government of India, Ministry of Labour & Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/60/82/D.IV(B), dated, the 23rd April, 1983.

SCHEDULE

“Whether the demand of the workmen of Baraee Colliery, Bhowra Area of BCCL, District Dhanbad that Shri Dadanji Pandey should be regularised as Dumper Operator-cum-Mechanic in category VI from 1976 as per NCWA is justified? If so, to what relief is the said workman entitled?”

2. Soon after the receipt of the order of reference notices were duly served upon the parties. Both the parties appeared and filed their respective W.S. documents etc. Thereafter several adjournments were granted to the parties. Subsequently at the stage of evidence both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the said petition of compromise and pass an Award in terms thereof which forms part of the Award as annexure.

B. RAM, Presiding Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 38/83

Employers in relation to the Management of Baraee Colliery,

AND

Their workmen.

Petition of Compromise

The humble petition on behalf of the parties to the above reference most respectfully shewth :—

1. That the above dispute has been amicably settled between the parties on the following terms :—

- That the demand of the concerned workman Sri Dadanji Pandey for his upgradation from category-V to Category-VI has already been accepted with effect from 1st January, 1981 and he has promoted to the Technical & Supervisory Grade 'C' with effect from 1st July, 1991 from Category-VI. In view of the mentioned promotions given to the concerned workman, he has no further grievance of any kind against the management.
- That the management will pay as Cost of Rs. 500 (Rupees five hundred) only to the union for certain legal expenses relating to the case.
- That the concerned workman Sri Dadanji Pandey will not claim in future difference of wage from 1976 to 1st January, 1981 or for any other relief arising out of the present dispute.

2. That in view of the above settlement, there remains nothing to be adjudicated.

Under the facts and circumstances stated above, the Hon'ble Tribunal will be graciously pleased to accept the Settlement as fair and proper and be pleased to pass the Award in terms of the Settlement.

For the workman.

1. G. D. Pandey,
Vice President RCMS/
Member Joint Committee.

2. Witnesses :

1. Sd/- Illegible
2. Sd/- Illegible

For the Employers

Sd/-

1. A. Kalam,
Dy. CMF, Baraee Colliery.

Presiding Officer
CGIT-II
(DHANBAD)

2. B. Prasad,
Dy. CPM, Bhowra Area.

नई दिल्ली, 22 जुलाई, 1992

का. आ. 2216—ओर्योगिक विवाद प्रधिनियम, 1947 (1947 की 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैमसे मेस्ट्रल कोलफील्ड्स लि. की गिरिडीह कोलियरी के प्रबंधतत्व के सबूत नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट ओर्योगिक विवाद में केन्द्रीय सरकार और्योगिक अधिकरण, (सं 1) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-92 को प्राप्त हुआ था।

[संख्या एल-20012(37)/89-प्राई आर (कोल-1)]

वी. के. वेणुगोपालन, डेस्क मधिकारी

New Delhi, the 22nd July, 1992

S.O. 2216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Giridih Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 17-7-92.

[No. 20012(37)/89-IR (Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 188 of 1989

PARTIES :

Employers in relation to the management of Giridih Colliery of M/s. Central Coalfields Ltd.

AND

Their workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. S. Murthy, Advocate.
2020 GI/92—7

For the Workmen—Shri B. Lall, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 10th July, 1992

AWARD

The present reference arises out of Order No. L-20012/37/89-IR. (Coal-I), dated, the 15th November, 1989 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order, and the said schedule runs as follows :

"Whether the supersession of Shri Narayan Singh, Foreman of Giridih Collieries by four of his juniors by the management of Giridih Colliery of C.C. Ltd., P.O. Beniadih, Dist. Giridih is justified? If not, to what relief is the workman concerned entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be passed on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and pass an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Ref. No. 188/89

PARTIES :

Employers in relation to the Management of Giridih Area of Central Coalfields Ltd. P.O. Beniadih, Dist. Giridih.

AND

Their Workmen.

JOINT COMPROMISE PETITION OF EMPLOYERS

AND WORKMEN

The above mentioned Employers and the workmen most respectfully beg to submit jointly as follows :—

(1) That the employers and the workmen have jointly negotiated the matter covered by the above dispute with a view to arriving at a mutually acceptable and amicable settlement.

(2) That as a result of such mutual negotiations, the Employers and the workmen have mutually agreed to settle the matter on an overall basis on the following terms :—

(a) It is agreed that the workmen concerned Sri Narayan Singh Foreman will be promoted to the post of Foreman-in-charge within fifteen days of this joint compromise petition being accepted by this Hon'ble Tribunal prospectively.

(b) It is agreed that in addition the workman concerned shall be given notional seniority in the post of Foreman-in-Charge from the date his juniors were promoted w.e.f. 21-6-1988 and that for the period notional seniority the workman concerned shall not be entitled to any arrear or monetary benefits.

(c) It is agreed that this is an overall settlement in full and final settlement of all the claims of the workman and sponsoring union arising out of the above reference.

(3) That the Employers and the workmen hereby jointly declare and confirm that they consider the above terms of settlement as fair, just and reasonable to both the parties.

In view of the above, the Employers and the workmen jointly pray that the Hon'ble Tribunal may be pleased to accept this joint compromise petition and give an award in terms thereof and thereby dispose of the above reference.

Sd/-

(N. K. Singh),
General Manager,
Giridih Area,
Central Coalfields Limited
For and on behalf of Employers

Sd/-

(Narayan Singh),
Workman concerned.

Sd/-

(R. K. Lall),
Personnel Manager,
Giridih Area,
Central Coalfields Limited,
For and on behalf of Employers.

(B. Lal),
Advocate,
For Employee.
Date 8-7-92

(Bal S. Murthy)
Advocate,
For Employers.

नई दिल्ली, 24 जुलाई, 1992

का.आ. 2217—ओशोगिल विवाद प्रथिनियम, 1947 (1947 का 14) की भारा 17 के अनुमत्य में, केन्द्रीय सरकार से, भारत कोकिंग कोल लि. का भुरुंगिया प्रोजेक्ट के प्रबधतंत्र के संबंध नियोजको और उनके कर्मकारों के बीच, अनुबंध में तिरिष्ट ओशोगिल विवाद में केन्द्रीय सरकार ओशोगिल प्रधिकरण (सं. 2), धनबाद के पचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-7-92 को प्राप्त हुआ था।

[संध्या ए-20012(267)/86-III-1-(ए)]

थी के, वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 24th July, 1992

S.O. 2217.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhurungiya Project of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 22nd July, 1992.

[No. L-20012(267)/86-D.III(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.
In the matter of an industrial dispute under Section 10(1)(d)
of the I.D. Act, 1947

Reference No. 114 of 1987

PARTIES :

Employers in relation to the management of Bhurungiya Project of M/s. Bharat Coking Coal Limited,

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary,
R.C.M.S. Dhanbad.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 13th July, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(267)/86-D.III(A), dated, the 3rd April, 1987.

SCHEDULE

“Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Bhurungiya Project of Messrs. Bharat Coking Coal Limited should reinstate in service their workman, Shri Ram Kapil Mistry, Mason who was dismissed from service in August, 1982, is justified? If so, to what relief is this workman entitled?”

2. The present reference has been heard afresh in the light of an order of remand by the Hon'ble Patna High Court passed in CWJC No. 1350/1990(R). It so happened that one Shri Ram Kapil Mistry the concerned workman was charge-sheeted for misconduct and a domestic enquiry was held holding him guilty of the charges. He was ultimately dismissed from the service. During the course of hearing the fairness of domestic enquiry was not challenged by the workman. Naturally argument was heard on merit. But while hearing the case on merit the then learned Presiding Officer framed one of the points for decision as to whether the departmental enquiry conducted by the CBI from Patna Office as presenting officer was illegal? This issue was held in affirmative. The management invoked the Writ jurisdiction of the Hon'ble Patna High Court on the ground that the domestic enquiry after having been held to be illegal, the management should have been given a chance to prove the charges against the concerned workman. The Hon'ble Court allowed the Writ application quashing the award and remitted back the matter to this Tribunal with direction to afford an opportunity to the petitioner management to adduce evidence in support of its case. Similar direction by the same order was issued that the workman be also allowed to adduce evidence, if any. In the result as per direction of the Hon'ble Court the parties were called upon to adduce evidence. Two witnesses have been examined, one for the management and the concerned workman examined himself as WW.1.

3. According to the W.S. the concerned workman claimed himself to be a permanent workman in the capacity of mason engaged in Damodar Colliery of Area No. I of M/s. BCCL. After sometimes he was transferred to Madhuband colliery in the same area No. I. The W.S. further states that the concerned workman was again transferred to Bhurungiya Project under Area No. III and while he was so transferred to Bhurungiya Project a charge-sheet dated 6th April, 1977 was served upon him under the signature of Project Manager,

Bhurungiya Project Manager Area No. III for certain misconducts said to have been committed by the concerned workman while working in Damoda colliery in Area No. I. The concerned workman submitted his reply on 13th April, 1971. The Project Manager, Bhurungiya Project without considering his jurisdiction to issue charge-sheet started a departmental enquiry which was conducted by the officer of CBI from Patna office as Presenting Officer which was illegal and without jurisdiction. The enquiry officer submitted report which was accepted by the management and ultimately the concerned workman was dismissed from service by letter dated 16th August, 1982 under the signature of General Manager, Mohuda Area No. II. On these grounds it has been prayed that the concerned workman should be reinstated and should be treated to have been continuing in the employment and he should also be paid full back wages for the entire period of forced idleness.

4. The management also filed W.S. stating therein that the concerned workman committed serious acts of misconduct while working at Damoda colliery. He was issued charge-sheet by competent authority. The workman submitted reply to the charge-sheet admitting his guilt. A proper and fair enquiry was held in which he was found guilty and ultimately dismissed from service by a letter of dismissal dated 16th August, 1982. While giving parawise reply it was stated that CBI had simply presented the case of the management in the departmental enquiry which was perfectly in order and lawful. In this way it has been prayed that the concerned workman has got no claim and the award be passed accordingly.

5. Now in the light of the fresh evidence adduced on behalf of the management we have to see whether the management has been able to prove the charges against the concerned workman. The photo copy of the charge-sheet is Ext. M-1. In the charge-sheet it has been alleged that the concerned workman Shri Ram Kapil Mistry was running a benami contract in the name of his son Shri A. Kumar and that he has signed work order as A. Kumar. He was also alleged to have received payment against two contracts and impersonated as A. Kumar and thus failed to maintain devotion of duty and integrity. He was thus charged for dishonesty and fraud in connection with Company's business amounting to misconduct under clause 18(1)(a) of the Standing Orders of Damoda colliery. This charge-sheet was issued by the Project Officer Bhurungiya Project where the concerned workman was lastly transferred. The learned counsel for the workman submitted in BCCL administration each area is under the administrative control of the Area G.M. and he is the authority to issue charge-sheet. The charge-sheet should have been issued by the General Manager of Damoda colliery of Area No. I where the alleged occurrence had taken place and the Project Officer of Bhurungiya Project of Area No. III had no business or authority to issue chargesheet and hence it was without jurisdiction. It was also submitted that the Project Officer Bhurungiya Project was not in receipt of any order from higher authority to issue chargesheet and this being the position the very issuance of charge-sheet was illegal and without jurisdiction and the concerned workman should not have been proceeded against on the basis of illegal chargesheet. Contrary to that the learned counsel for the management submitted that issuance of chargesheet by the project Manager, Bhurungiya Project was not an illegality and at best that may be called an irregularity. I think the contention raised by the learned counsel can be appreciated in the sense that the concerned workman had already been transferred to Bhurungiya Project. While being posted at Damoda colliery the issuance of chargesheet by any other Area Manager would have been an illegality. The concerned workman had replied to the chargesheet (Ext. M-2) which will be dealt with later on.

6. A domestic enquiry was conducted against charges and admittedly an officer in the rank of CBI had acted as representing officer. The representing officer is just like a Public Prosecutor in a criminal trial and he acts for and on behalf of the State. Similarly in the instant case the Inspector had represented the case of the management. The very presence of CBI Officer in an enquiry has been deprecated and termed as violative of the basic norms of disciplinary proceedings. At this stage I would like to refer the evidence of MW-1 Shri P. K. Roy, the enquiry officer. He stated that during the course of enquiry no objection was raised nor any

petition was filed against the Presenting Officer. He also stated that he had enquired into the matter on the basis of the Standing Orders of Bhurungiya Project. He further stated that normally departmental enquiry is conducted by the officer of the management and the presenting officer also belongs to the management. According to the witness he had enquired into the matter on the basis of the standing orders of Bhurungiya Project. The question is as to why he should be permitted to conduct the enquiry according to the standing orders of Bhurungiya Project when the misconduct was alleged to have been committed in Damoda colliery. In the instant domestic enquiry the CBI Inspector had presented the case of the management before the Enquiry Officer and what to talk of his mere presence. The learned counsel for the workman has placed his reliance upon an authority reported in IFLR Vol. 57 at page 737 (B. C. Basak-vers-Industrial Development Bank of India and others). This authority was cited even before the Hon'ble High Court, Patna Ranchi Bench and the Hon'ble Court has been pleased to hold that the aforesaid authority was not identical to the instant case. In that view of the matter any further appreciation of the authority stands concluded so far this Tribunal is concerned. However, the parties have been allowed to adduce evidence and now in the light of the fresh materials in the shape of evidence this Tribunal has to examine as to how far the management has been able to prove the charges against the concerned workman.

7. It is alleged that the concerned workman had been taking benami contract work in the name of his son Shri A. Kumar who was a minor. Under the law a contract entered into by a minor is void ab initio. It is not surprising that the concerned workman was taking contract in the name of his minor son Shri A. Kumar. The most surprising thing as to how a minor was allowed by the authority of the management to do contract work. The learned counsel for the workman submitted at this stage that there is no paper to suggest that any contract was taken by the concerned workman. I find that Ext. M-6 series are the payment voucher wherein payment was alleged to have been taken by the concerned workman in the name of A. Kumar. On the back of voucher A. Kumar has been written on revenue stamp. It was pointed out as to why the concerned workman will be signing as A. Kumar knowing fully well that he was not A. Kumar. Normally he was expected to have signed as Ram Kapil Mistry for A. Kumar. However, the payment voucher was used to be passed and signed by the Manager, Asstt. Manager and Agent. The question is that the concerned workman was a full-fledged employee of the management and normally he must be known to most of the authorities. In the situation why he was allowed to receive payment when the authorities fully knew that he was not A. Kumar. In none of the payment vouchers the name of Ram Kapil Mistry appears. There is no documentary evidence to prove that Shri A. Kumar was a minor. MW-1 has stated that to his knowledge there was no circular in BCCL that the son of an employee cannot do contract work. By putting such question perhaps the learned counsel for the workman wanted to derive at that A. Kumar was a contractor and he used to discharge such work and receive payment and that the concerned workman was nowhere in the picture. It was urged that according to this witness Mines Surveyor was the immediate officer of the concerned workman but he was not examined by the management to speak anything against the concerned workman about his conduct. I think the contention cannot be simply brushed aside. MW-2 has come to say that the vouchers were used to be signed by the concerned workman as A. Kumar. On some of the vouchers signature of this witness also appears. The question is as to why he was not objecting to such illegal transaction and by putting his own signature he was rather encouraging the affairs to proceed on. He has proved two work orders Ext. W-7 and W-7/1, in the name of A. Kumar. From the endorsement on the back of order it appears that some cement bags were supplied to the contractor. MW-2 has stated that for the first time Kapil Mistry came to him and asked for cement and also told that he was getting cement in the name of his son. He further stated that he used to issue cement under the direction of the Manager of the colliery. The management had issued order in the name of A. Kumar. He stated in a very clear terms that on the back of the order the signature of A. Kumar was present and believing his signature to be genuine he issued the cement to the concerned workman. In this way he believed the signature of A. Kumar on the back of work order to be genuine.

It may be significantly noted here that the signature of A. Kumar appearing on the back of work order is similar to those appearing on the payment vouchers. In the situation perhaps the witness cannot be permitted to state in the next breath that the concerned workman used to sign A. Kumar on the payment voucher.

8. The learned counsel for the management has relied upon the reply to the chargesheet submitted by the concerned workman where he admitted to have been running a contract in the name of his son and signing as A. Kumar while receiving the payment. It was also urged that the concerned workman cannot be exonerated from the charges simply because of the fact that some other officials were in connivance. The reply to the chargesheet has been marked Ext. M-2. It was urged that a workman under the Mines cannot be allowed to stay in the mines after his duty hours. He also cannot be allowed to work for more than 8 hours in a day as provided under Section 31 Sub-clause (1) of the Mines Act, 1952. Just to obviate this thing the concerned workman took contract in the name of his son. For a contract in his own name he would have required to stay in the mine for more than 8 hours which was not permissible under the Mines Act. I would have appreciated the contention of the learned counsel had there been any other supporting evidence besides this document Ext. M-2. Mere admission of guilt unsupported by any other corroborating evidence cannot fasten any accused with the charge. In this case we have found that the witness for the management stated that the concerned workman had taken contract in the name of his son and he used to receive payment putting the name of A. Kumar. But MW-2 has already stated that he used to supply cement believing the signature of A. Kumar to be genuine. In such view of the matter how it can be said that the concerned workman used to sign as A. Kumar. This is not supporting rather contradictory to the admission made by the concerned workman in reply to the chargesheet. The workman has been examined as WW-1 wherein he has denied every allegation levelled against him.

9. In the result, I hold that the demand of Rashtriya Colliery Mazdoor Sangh that the management of Bharungiya Project of Messrs. Bharat Coking Coal Limited should reinstate in service their workman, Shri Ram Kapil Mistry Mason who was dismissed from service in August, 1982 is justified. Consequently the concerned workman is entitled to be reinstated in his original job of Mason w.e.f. August, 1982 with fifty per cent back wages and other consequential benefits. The management is thus directed to reinstate the concerned workman in his original job with effect from August, 1982 with payment of fifty per cent back wages and other consequential benefits within one month from the date of publication of the Award.

B. RAM. Presiding Officer

नई दिल्ली, 31 जुलाई, 1992

फा.आ. 2218.—बौद्धिगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोलिंग कॉल लि. की डी.टी.सी. वर्मो माइन्स के प्रबंधतात्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चिट बौद्धिगिक विवाद में केन्द्रीय सरकार बौद्धिगिक अधिकारण, (सं 1) धनबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[सम्पा एम-20012(236)/89-प्राई.प्रार. (कोल -1)]

वी.के. वेणुगोपालन, ऐस्क प्रधिकारी

New Delhi, the 31st July, 1992

S.O. 2218.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of D. V. C. Bermo Mines and

their workmen, which was received by the Central Government on the 27-7-92.

[No. L-20012(236)/89/IR(COAL-I)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the
Industrial Disputes Act, 1947

Reference No. 49 of 1990

PARTIES :

Employers in relation to the management of D. V. C.
Bermo Mines, P. O. Bermo, Dist. Giridih.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : Shri S. K. Choudhary, Coal Supdt.
Agent of D. V. C. Bermo Mine.

For the Workmen : Shri P. G. Guha, Asstt. General
Secretary, DVC Staff Association.

STATE : Bihar

INDUSTRY : Coal.

Dated the 15th July, 1992

AWARD

By Order No. L-20012/236/89-I.R (Coal-I), dated, the 26th February, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following details apart, is follows :

"Whether the action of the management of D. V. C. Bermo Mines, P. O. Bermo, Dist. Giridih by not recording the exact date of birth of Sr. Laloo Singh, Chowkidar|Arm Guard, as per school leaving certificate and retiring him before the date of superannuation justified ? If not, to what relief the workman concerned is entitled ?"

2. The case of the management of D. V. C. Bermo Mines, Giridih, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :—

The present reference is not maintainable as the name of the workman to whom the reference relates has not been disclosed in the terms of reference. The reference suffers from total non-application of mind. The D. V. C. is statutory Corporation created under an Act of Parliament. Its functions are laid down in the said Act. The Corporation has a coal mine at Bermo called D. V. C. Bermo Colliery which is a captive mine which produces a small percentage of coal required by the Thermal Power Station of D. V. C. at Bokaro. Lallu Singh, the concerned workman was initially appointed under the management with effect from 28-10-61. Sometime after his employment stood discontinued and he was again re-employed with effect from 1-1-63. Since D. V. C. Bermo Mine is a mine under the Mines Act, the personal particulars including age/date of birth of the workman are entered in Form 'B' Register maintained under the Mines Rules. In the Form 'B' Register the age of Lallu Singh as on the date of his first appointment on 28-10-61 was recorded as 32 years on his own declaration alongwith other particulars regarding parentage, address etc. Lallu Singh, the concerned workman, was explained these entries

and he attested the same by affixing his signature in token of his having accepted correctness thereof. This constituted an admission on his part within the meaning of Sec. 17 of the Evidence Act. He was legally estopped from taking any other stand. On the basis of the aforesaid declaration made him, his date of birth was worked out to 28-10-29. The age of superannuation for the workman of the management of D. V. C. is 60 years. Lallu Singh attained the age of 60 years on 27-10-89 and he was accordingly superannuated with effect from 31-10-89 i.e. the last date of the month in which he attained the age of 60 years. Lallu Singh did not raise any controversy regarding his date of birth/age as recorded in the Form 'B' Register during his service till receipt of superannuation notice and he raised the purported dispute by mis-representation and with malefic intentions. Judicial pronouncements have deprecated the tendency on the part of the employees to seek change of entry relating to their date of birth in the service record towards the tag end of their career. Lallu Singh with the support of the sponsoring union is trying to exploit the public sector management and to continue in its employment even after attaining the age of 60 years by illegal method. In view of the foregoing facts and circumstances, the management has prayed that the present reference be struck down as being illegal and void and its action in superannuating Lallu Singh with effect from 31-10-89 be held to be justified.

3. The case of the sponsoring union, D. V. C. Staff Association, Bermo Mines, as appearing in the written statement, briefly stated, is as follows :

D.V.C was created by an Act of Parliament in 1948. The function and objective of the D.V.C. is primarily flood control and power generation. Bokaro Thermal Power Station is one of the power stations of D.V.C. Bermo Colliery is a captive mine for supply of coal of partial requirement to Bokaro Thermal Power Station. Service conditions of the employees of D.V.C. Bermo colliery are governed by Certified Employment Standing Orders under Employment Standing Order Act, 1946. Lallu Singh was appointed as Chowkidar in the Watch & Ward Section with effect from 22.9.64. His appointment was subject to production of medical fitness certificate from Medical Officer, Bermo Mines. In 1988 Lallu Singh was asked to sign a new Form 'B' register. At that time he came to know about the entry of his erroneous date of birth in Form 'B' Register as well as C.M.P.F. form. By application dated 25.7.88 and 17.8.88 Lallu Singh, the concerned workman, requested the Coal Superintendent & Agent to record his correct and actual date of birth as 11.8.34 on the basis of the certificate issued by the Head Master, R. R. High School, Suryapura, Dist. Rohtas, in which he read upto Class X. The Coal Superintendent did not give any reply to the representation. Thereafter the union raised an industrial dispute over the wrongfull entry of date of birth of Lallu Singh with the A.L.C.(C) by letter dated 13.9.1988. The A.L.C. (C) held conciliation over the dispute on several dates. The A.L.C. (C) wrote to the Head Master, R. R. High School, Suryapura, Rehtas by his letter dated 5.12.88 asking for photostat copy of the Admission Register in which the date of birth of Lallu Singh was recorded. The conciliation proceeding ended in failure due to adamant attitude of the management. There are two circulars of D.V.C. issued in the year 1965 and 1975 laying the guidelines for verification and acceptance of date of birth. It has been clearly stated that in case of illiterate staff who is not matriculate or equivalent, his date of birth shall be invariably supported by documentary evidence and then to be entered in the record of service. If he is able to produce evidence of age/date of birth from the school where he studied, only such evidence should be accepted. Lallu Singh was wrongfully retired from service on 31.10.89 on the basis of erroneous date of birth recorded by the management. On the basis of the school certificate Lallu Singh will attain 60 years of age in the month of August, 1994. The age of attaining superannuation of a Watchman in D.V.C. Bermo Colliery is on attaining 60 years age. The date of retirement should be the last date of the month except if the date of birth falls on the first date of the month. In the circumstances, the union has prayed that the present reference be answered in favour of the concerned workman by directing the management to restate him in service and to allow him to continue in service upto 31.8.94. The union has also

prayed that the concerned workman is also entitled to get pay and allowances with consequential benefit and cost for the period from 1.11.89 and the date of his reinstatement in service.

4. In rejoinder to the written statement of the union, the management has stated that Lallu Singh never submitted any school leaving certificate to the management prior to his superannuation notice and reference to such certificate in the terms of reference is also illegal and baseless. The management has stated that only a small percentage of coal required by Bokaro Thermal Power Station is supplied by Bermo colliery. It is not a fact that Lallu Singh was appointed for the first time in Bermo Mine on 22.9.64 as alleged by the union. The concerned workman was given advance notice of superannuation and that time he came forward with a fabricated certificate which was not accepted by the management. At any rate even if the certificate is genuine the management was not obliged to accept the same considering its rules. The concerned workman has failed to give any reason why such certificate was not produced at the time of appointment. It has been denied that the management has recorded his date of birth wrongly. The rule of the management is to retire workman from service on the last date of the month in which they attain the age of 60 years.

5. In rejoinder to the written statement of the management, the union has stated that omission of the name of the concerned workman in the annexure is a trifling technical error. The allegation of non-application of the mind of the appropriate Government is not relevant to the merit of the present case. It has been admitted that the D.V.C. was statutorily created under the Act of Parliament. The Corporation has a coal mine at Bermo called D.V.C. Bermo colliery which is a captive mine and which produces and supplies small percentage of coal required by the Thermal Power Station of D.V.C. at Bokaro known as B.T.P.S. The union has not accepted the fact that Lallu Singh was appointed on 28.10.61. The union has denied that Lallu Singh was explained the particulars as recorded in Form 'B' register and that he accepted the same by affixing his signature in token of correctness of the same. The management in its correspondence to the Asstt. Labour Commissioner (C), Govt. of India, Hazaribagh by letter dated 6.10.88 stated that the age of Lallu Singh was 32 years as on 1.1.63. As such working out of date of birth as 28.10.29 was in contradiction to his own statement itself. The union has denied that the concerned workman attained the age of superannuation on 27.10.89 and asserted that his retirement with effect from 31.1.89 is wrongful. Lallu Singh was not intimated earlier about his erroneous recorded date of birth/age. He could only come to know of the erroneous recorded date of birth/age after publication of the superannuation notification. As soon as he came to know of this erroneous recorded date of birth, he immediately represented to the management. Lallu Singh has been wrongly retired with effect from 31.10.89 and he will be reaching the age of superannuation in August, 1994.

6. The management, in order to justify its action has examined two witnesses, namely, MW-1 S. K Choudhary at present holding the post of Coal Superintendent and Agent of D. V. C. and MW-2 G. N. Rai, Personnel Manager in D. V. C. Mine and laid in evidence a mass of documents which have been marked Exts. M-1 to M-7.

On the other hand, the sponsoring union has examined the concerned workman and two other witnesses, namely, MW-2 Dinesh Choubey, Unit Secretary, D. V. C. Staff Association and WW-3 Shilbji Prasad Gupta, a Teacher of Surajpura High School and laid in evidence a number of documents which have been marked Exts. W-1 to W-15.

7. It is irrefragable position that D.V.C. is a statutory Corporation created under the Act of Parliament. The Corporation has a coal mine at Bermo called DVC Bermo colliery which is a captive mine which produces and supplies a small percentage of coal required by the Thermal Power Station of DVC at Bokaro known as B. T. P. S.

8. The present dispute has been raised by the Secretary, D. V. C. Staff Association consequent upon retirement of

the concerned workman, Lallu Singh on 31-10-89 by the management of D. V. C. Bermo Colliery on the ground that he reached the age of superannuation upon completion of 60 years of age on that date. According to the management, Lallu Singh did not raise any controversy regarding his date of birth/age as recorded in Form 'B' Register during his service till receipt of superannuation notice and later he raised purported dispute by mis-representation and with malafide intention. In reply to this statement of fact the union has stated that Lallu Singh was not intimated earlier about his erroneous recorded date of birth/age. He could only come to know his date of birth/age after publication of superannuation notification. As soon as he came to know his erroneous recorded date of birth/age immediately he represented to the management. Thus, the fact emerges from the pleading of the parties is that Lallu Singh submitted representation for correction of his date of birth after receipt of notice of superannuation. This notice of superannuation dated 20-7-88 has been marked Ext. M-3. In terms of this notice Lallu Singh was to retire from service on 31-10-89. MW-1 S. K. Choudhary, at present holding the post of Coal Superintendent/Agent of D. V. C. Bermo Mine has stated that the concerned workman did not raise any objection against the age as recorded in Form 'B' Register before the retirement forecast. It was only when the retirement forecast was issued that he submitted a representation. Lallu Singh of course tried to wriggle out of the position by stating that in 1988 the management directed him to sign Form 'B' Register and after inspection of the Form 'B' Register it came to his notice that his age was not correctly recorded therein and then he produced school leaving certificate to the management in proof of his age. It appears that he submitted his representation which was received in the office of the management on 25-7-88. Even though the concerned workman has stated that he came to know that his age was not correctly recorded in Form 'B' Register when he was directed to sign Form 'B' Register by the management, the pleading of the parties and evidence on record firmly establish the position that he made representation to the management for correction of his age after he had received superannuation notice from the management.

It appears that when he submitted his representation, he had, according to the management, one year and odd months to retire from service.

8. Shri S. K. Choudhary, representative of the management has submitted before me that such representation and industrial dispute raised by the workman for correction of age at the fag end of his character have been deprecated by different Courts. In support of his contention he cited a decision reported in 1987 Lab. I. C. 579 (M.P.) (Steel Authority of India Ltd. Vs. Industrial Court, Indore and others). Indeed, it has been held in the decision cited that if employees are left to challenge the date of birth at any point of time at their whim, it would amount to interference in the terms of contract of service and hence the circular issued by the company was reasonable and application of the employee was liable to be rejected. In that case there was a compulsive clause to raise dispute over the age at a certain point of time. But in the present case no such circular envisaging the provision for raising dispute at a certain point of time has been issued. Besides, in the present dispute the scope of enquiry is very limited whether the management is justified in not recording the exact date of birth of the concerned workman as per school leaving certificate and retiring him from service before the date of superannuation as per school leaving certificate. Hence, in my view, the present reference is maintainable.

9. The management has complained that the name of the concerned workman does not appear in the schedule nor has the appropriate Government applied its mind in making the present reference. Both these contentions of the management have no substance since later by Corrigendum the appropriate Government has provided the name of the concerned workman. The appropriate Government has also applied its mind in making the reference because the only question to be considered in this case : whether the management is justified in not recording the date of birth of the concerned workman as per school leaving Certificate.

10. According to the management, Lallu Singh was initially appointed by the management with effect from

28-10-61 and sometime thereafter his employment stood discontinued and again he was re-employed with effect from 1-1-63. In support of this fact the management has produced the relevant Form 'B' Register which has been marked Ext. M-4. At Sl. No. 192 of the Form 'B' Register the name of the concerned workman appears. Shri S. K. Choudhary has deposed that earlier it was the practice of the management to maintain a composite register containing Form 'B' Register and Attendance Register. Ext. M-4 appears to be a composite register containing Form 'B' Register and Attendance Register. According to this register it appears that the age of the concerned workman was recorded as 32 years on the date of his initial appointment. The register further discloses that he was initially appointed on 25-10-61 and his employment was discontinued on 1-9-62. Thereafter his service was again discontinued with effect from 31-12-62 but his date of appointment after 1-9-62 has not been mentioned. Anyway, the register further discloses that he was again appointed on 1-1-63 and his service was discontinued on 26-1-63 for long absenteeism.

Shri Guha has questioned the authenticity of this document and pointed out that the date of his re-appointment after 1-9-62 has not been disclosed in the register. The position is really so. The union has stated that the concerned workman joined the service of the Corporation on 22-9-64. The letter of appointment dated 25-9-64 supports this position. But that the concerned workman also worked in the Corporation before 25-9-64 is established by documentary evidence. It appears that he submitted two applications praying for earned leave from 8-3-63 to 16-3-63 and 7-6-63 to 14-6-63. It appears that his prayer for leave was approved (Exts. M-6 and M-6[1]). These two documents again point out that sometime after 26-1-63 the concerned workman was again re-appointed by the management.

11. According to the management, Lallu Singh disclosed his age on the date of his first appointment as 32 years alongwith other particulars, such as, parentage, address and he signed the Form 'B' Register in token of his having accepted the correctness thereof. The sponsoring union has disputed this fact.

12. Shri Guha has submitted that the concerned workman never accepted the correctness of his age as recorded in Form 'B' register as he had no knowledge about it. But then the question remains that Form 'B' Register contains other particulars of the concerned workman which are not alleged to be incorrect. Thus, the reasonable inference that may be drawn is that all the particulars in Form 'B' Register including his age was provided by the concerned workman. He signed Form 'B' Register in English. It has been tried to establish that he does not know English. But that is immediately dismissed as contention of no consequence since the concerned workman signed the deposition sheet in English before this Tribunal.

13. Now, the question remains as to whether the management was justified in not accepting the school leaving certificate of the concerned workman to record his date of birth. Immediately after publication of the notice for retirement the concerned workman obtained school leaving certificate issued by Head Master of Surajpura High School (Ext. W-14). In the school leaving certificate it has been disclosed that the date of birth of the concerned workman was 11-8-34. There is no evidence on record on what basis the date of birth was recorded in the Admission Register of the school. Besides, in the Admission Register (Ext. W-13) the name of the concerned workman has been mentioned as Laloo Chaudhary, son of Rambriksha Choudhary. The Head Master had written to the A. L. C. (C) that in the school leaving certificate the surname of the concerned workman was changed to 'Singh' in place of 'Chaudhary' at his own request. But Laloo Singh and Laloo Choudhary is the same person as per his record. It is incomprehensible to understand as to what the Head Master has meant by Laloo Singh and Laloo Chaudhary is the same person as per record. He seems to be an obliging Head Master by all means. WW-3 Shibji Prasad Gupta, a Teacher of Surajpura High School, has proved Admission Register of the school. He has admitted that the Admission Register of the school does not disclose the name of the school and the

original Admission Register, also bears out the same position. He has further admitted that he could not say as to who has penned the Admission Register.

Regard being had to the discrepancy of the surname of the concerned workman in the Admission Register and in the School Leaving Certificate and also of the fact that the Admission Register does not bear the name of the School, I think that the certificate produced by the concerned workman cannot be accepted as genuine piece of evidence in respect of his age. Besides, no explanation has been provided by the concerned workman as to why he did not produce school leaving certificate at the time of his initial appointment or at the time of his appointment on 22-9-64.

14. A controversy has been raised over the issue as to whether the Corporation is bound by the guideline of J.B.C.C.I. MW-1 S. K. Choudhary has stated that the Corporation has not accepted J.B.C.C.I. circular on the subject of determination of age of the workman. As a matter of fact, D.V.C. is not a member of J.B.C.C.I.

On the other hand, WW-2 Dinesh Choubey, Unit Secy. of D.V.C. Staff Association has asserted that J.B.C.C.I. instructions are applicable and followed in D.V.C. Bermo Mines. It appears that D.V.C. Bermo Mine is not signatory to N.C.W.A.I., II, III & IV. The union has not produced any positive evidence to show that J.B.C.C.I. circulars are followed in D.V.C. Bermo Mines.

The union has produced circular of D.V.C. dated 29-9-65 (Ext. W-9). Clause (ii) of the circular of the Corporation runs as follows :

"(ii) Where an employee is not a Matriculate and he is able to produce evidence of age/date of birth from the school where he studies, only such evidence should be accepted."

This circular was replaced by circular dated 9-7-75 (Ext. W-8). Clause (iii) of the circular reads as follows :

"(iii) In the case of literate staff who is not a Matriculate or equivalent the date of birth shall be invariably supported by documentary evidence and entered in the record of service in the employee's own handwriting. If he is able to produce evidence of age/date of birth from the school where he studied, only such evidence should be accepted. If not, he should produce documentary evidence of authentic nature in support of his declaration of age."

The concerned workman did not produce any documentary evidence in support of his age before the management. Hence, the management was constrained to record his age as per his own declaration in Form 'B' Register as pointed out before. The JBCCI circular has been produced by the union and marked Ext. W-15. The relevant provision for review and for determination of date of birth in respect of existing employees is envisaged in the circular is reproduced herein below :

"(a) Wherever there is no variation in record such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of case will take appropriate action for correction through age determination committee/Medical Board.

(b) Wherever there is variation a suitable provision for age determination committee/Medical Board would be made."

In terms of this circular re-opening of the case of the concerned workman in respect of his age is not warranted as there is no evidence regarding variation of age of the concerned workman in the records of the management.

Shri Guha has submitted that the management has accepted the date of birth in certain cases even though the date of birth on initial appointment in these cases were otherwise. He has brought on record a settlement in this regard marked Ext. W-10. But here, it appears that the management ac-

cepted the date of birth of T. Kanjilal on the basis of age as recorded in Form 'B' Register. There is no evidence on record that the management has deviated from its normal practice in this case. It appears that the management issued two Office Orders dated 18-1-74 (Ext. M-1) and dated 2-3-74 (Ext. M-2) inviting representation in regard to the entry of age in the register of the office till 22-2-74 (Ext. M-1). By second office order dated 2-3-74 (Ext. M-2) the date was extended to 31-3-74. A copy of these office orders were sent to the Secretary, D.V.C. Staff Association, D.V.C. Mines with a copy of the list of employees with their age as recorded in the register. A copy of these Office Order were displayed in the Notice Board. Even then neither the union nor the concerned workman moved an inch for correction of the age of the concerned workman.

15. Considering these evidence on record and facts and circumstances of the case, I come to the inescapable conclusion that the management of D.V.C. Bermo Mines is justified in not recording the date of birth of the concerned workman as per School Leaving Certificate and retiring him from service on the basis of age as recorded in its record.

16. Accordingly, the following award is rendered the action of the management of D.V.C. Bermo Mines in not recording the date of birth of the concerned workman as per School Leaving Certificate is justified. The management is also justified in retiring him from service on the basis of age as recorded in its record.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer.

नई दिल्ली, 31 जुलाई, 1992

का.आ. 2219—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, तोत्रीय गरकार मैसर्स टाटा शायरन एण्ड स्टील कंपनी की मस्केता कोरियरी के प्रबंधितक के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विट औद्योगिक विवाद में केंद्रीय सरकार श्रीयोगिक अधिकरण (सं. 2) धनबाद के पचपट को प्रकाशित करती है, जो केंद्रीय सरकार को 29-7-92 को प्राप्त हुआ था।

[संख्या पल-20012(358)/90-प्राई.आर. (कोल-1)]

बी. के वेणुगोपलन, डेस्क अधिकारी

New Delhi, the 31st July, 1992

S.O. 2219.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Tata Iron and Steel Co. Ltd. Malkera Colliery and their workmen, which was received by the Central Government on 29-7-92.

[No. I-20012(358)/90 IR (Coal-1)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 99 of 1991

PARTIES:

Employers in relation to the management of Tata Iron & Steel Co. Ltd; Malkera Colliery and their workmen.

APPEARANCES:

On behalf of the workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 21st July, 1992

AWARD

The Govt of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/358/90-I.R.- (Coal-I) dated, the 11th February, 1991.

SCHEDULE

"Whether the action of the management of Malkera Colliery of M/s. Tata Iron and Steel Company Ltd., in dismissing Shri Mohd. Muslim T. No. 67066 from service w.e.f. 1-4-89 vide their letter No. ASMG/ 1868/46 dated 20/28-3-89 is justified? If not, to what relief the workman is entitled?"

2. The main allegation against the concerned workman namely Md. Muslim was that he got his attendance marked on 21-4-88 while in A Shift duty although he did not go down the mine for work. Similarly he also got the attendance marked out after the expiry of the shift and that he received payment for the day without doing any work. The concerned workman has denied to have marked either "In" or "Out" in Register—C on 21-4-88, and the management falsely issued chargesheet to deprive the concerned workman of his job.

3. The management on the other hand has to say that the concerned workman committed serious misconduct of fraud and dishonesty on 21-4-88. He was scheduled to be on duty in 'A' shift. He got his attendance marked in Form—C register maintained under the Mines Act and did not go down the mine on that day. He got his attendance marked "Out" after the expiry of the shift. As his attendance was marked on 21-4-88 he got his wages for that day on the basis of the pay slip issued to him. This dishonesty was detected by the management only in the month of July, 1988 and accordingly the concerned workman was issued charge-sheet dt. 5-7-88 under Clause 19(2) of the Certified Standing Orders. The concerned workman submitted his reply dated 11-7-88 denying the allegation levelled against him. Ultimately the matter was enquired into under the domestic enquiry and the concerned workman was held guilty and dismissed.

4. It may be mentioned here that the fairness and propriety of the domestic enquiry has been admitted by the concerned workman. Thereafter the case was heard on merit.

5. Admittedly, the concerned workman did not work on 21-4-88. He received wages for 21-4-88 and the same has not been denied. The defence taken by the concerned workman was that he was not aware of the circumstances under which his attendance was marked in Form C register. As regards the receipt of the wages he has to say that he being an illiterate employee could not ascertain as to whether he was paid for 21-4-88 or not.

6. While giving parawise reply to the W.S. of the concerned workman the management stated that the attendance clerk will not book the attendance of the workman unless he will report for his duty at the beginning of his shift. He will not put time of entry at the "In" column without seeing the person at the counter. Similarly the attendance clerk will not put down "out" col. without seeing the person

at the counter. In this way according to the management the concerned workman had appeared at the counter both at the beginning and end of the shift and that the attendance clerk had seen him personally. Without going into the merit of the case it may be noted that human being cannot act and behave like a computer machine. It may be specifically noted that the truth always suffers from some infirmity if projected through human process. Therefore, it cannot be said with all certainty that the Attendance Clerk was hundred percent correct in marking the attendance of the employees. Some lapses though in ignorance cannot be completely ruled out. Here I may refer to the evidence of the attendance clerk Shri B. S. Bhattacharjee who was examined before the Enquiry Officer. During cross-examination the question was put to witness as to whether he remembered any other person present in the attendance cabin at the time of booking attendance on the alleged day to which he replied in negative. He was also asked as to how he was in a position to remember that on that day the concerned workman had come and got attendance marked "In". The witness replied that he remembers only because he did not mark the attendance without seeing the person. I find the witness has stated just in a mechanical manner and one cannot be in a position whosoever he may be to remember who came for attendance and who did not.

7. Now let us see how far the management has been able to prove the charges of fraud and dishonesty of the concerned workman. The concerned workman in his reply to the chargesheet had stated that he while coming for duty on 21-4-88 had some quarrel with one Ram Lal Barhi in connection with some business matter and thus he was prevented from going to duty. Again on the same day at about 2 P.M. he had quarrel with the same man giving rise to a criminal case which was lodged at Jorapukur P. S. In the circumstances he failed to understand as to how his attendance was marked, in the attendance cabin.

8. In the domestic enquiry one Shri Bijoy Pandey, Senior Personnel Officer of Malkera colliery had been appointed as the Representing Officer of the management. He proved a Cap Lamp Register to show that cap lamp was not issued to the concerned workman. Admittedly, the concerned workman did not go down the mine and so naturally no cap lamp was issued to him. The witness stated that Md. Muslim had been deputed to work in 15 Button seam during the month of April, 1988. One Shri J. N. Trigunait, Asstt. Manager was the Incharge of 15 Button seam and after enquiry from him it was revealed that the concerned workman did not report to him on 21-4-88 for allotment of duty and his whereabouts could not be known till the end of the shift. The Presenting Officer also enquired from one Shri Mukul Sanyal. Overman who was on duty in B Shift on 21-4-88 Shri Sanyal also stated that he did not see the concerned workman on duty on 2-4-88.

9. Shri J. N. Trigunait was examined before the Enquiry Officer as MW-2. He stated that the concerned workman did not go underground for duty on 21-4-88. He also stated to have enquired and inspected the section along with Shri Sanyal on 21-4-88 itself. But they did not see Md. Muslim either on underground or on the surface. However, Shri Sanyal MW-3 has denied to have inspected the section along with Shri Trigunait on 21-4-88. This means either of the two witnesses are stating falsely. In cross-examination these two witnesses have not denied the possibility of marking attendance by mistake. It was suggested to Shri Trigunait that the attendance of the concerned workman might have been marked by mistake to which the witness replied in affirmative and stated that it was possible because no Cap Lamp was issued to him. Shri Sanyal was to allot the duty of the employees working underground. He stated that he had not allotted any duty to the concerned workman on 21-4-88. and it was suggested to the witness that the concerned workman might have absented on that day to which the witness replied that it was possible because he had not allotted any job to the concerned workman. The evidence of these two witnesses will rather support the contention of the concerned workman that his attendance might have been booked due to some mistake or inadvertence on the part of the Attendance Clerk.

10. The statement of the concerned workman was recorded during the enquiry and there he stated something what he had stated in reply to the chargesheet. Further stated that on 21-4-88 while on way to duty he had a quarrel with Shri Ram Lal Barhi. At about 8 A.M. he went to Md. Osman Sarpanch at Digwadih and requested him to intervene into the matter. He was with the Sarpanch from 8. A.M. to 10 A.M. Lastly the dispute was settled in presence of Sarpanch and other respectful persons of the locality. The concerned workman had filed the certificate of the Sarpanch and the settlement paper which are on the record. In cross-examination he stated that he was not given any warning letter for unauthorised absence. One Shri A. K. Hazra was summoned by the Enquiry Officer and was examined to explain the procedure as to how a workman is allowed to join his duty in case of unauthorised absence for more or less than 10 days. He stated that the workman is given warning and joining slip. The concerned workman in his statement stated that he was also given joining slip which he submitted in the Attendance Cabin. He stated that on other occasion he absented but he was never served with any warning letter. In the face of this evidence I doubt if the procedure is strictly followed by the management or not.

11. Shri Ram Lal Mistry was called as witness and he stated that he had gone to his native village and returned at 8.00 A.M. on 21-4-88. Naturally by making such statement he wanted to say that he had no occasion to quarrel with the concerned workman at 6.30 A.M. on 21-4-88. He is a carpenter and according to him he was on duty from 9 A.M. to 5 M.P. on that day but admittedly at about 2 PM he had come home to take one of his implements namely Basuli when he was assaulted by the concerned workman. In my view this witness cannot be called a truthful witness while speaking the case of the concerned workman only because he had a fight with him. No doubt the matter was settled at the intervention of the respectable person of the locality but the tinge of the hostility is expected to be there. The enquiry officer held the certificate of Sarpanch was an after thought because in reply to the chargesheet the concerned workman had not stated that he had met the Sarpanch. I think every details are not necessarily to be stated in reply to the chargesheet.

12. I have taken into consideration all these matters plus the oral and documentary evidence both. No doubt I find some infirmity in the evidence of the concerned workman but as is not supposed to prove his innocence. It is for the management and the management alone to prove the guilt of the concerned workman, as levelled against him in the chargesheet. Two witnesses of the management have not denied the possibility of marking attendance by mistake. I find that the management has not been able to prove the charges satisfactorily against the concerned workman. The management has brought some documents on record to prove the past misconduct of the concerned workman. Of course that would have been considered at had the concerned workman been proved guilty of the charges. These documents have been marked Ext. M-11 to M-13. They are the records of the misconduct committed on 2-9-83 by the concerned workman. For the reasons stated above I am to hold that the concerned workman was not guilty of any charge as levelled by the management and so the order of dismissal passed by the management is hereby set aside. The concerned workman is entitled for reinstatement with full back wages and other consequential benefits. The management is thus directed to reinstate the concerned workman with payment of full back wages and other consequential benefits from the date of dismissal to the date of reinstatement within one month from the date of publication of the Award.

B. RAM, Presiding Officer.

नई दिल्ली, 31 जूनाई, 1992

का.प्रा. 3310.—औद्योगिक विवाद प्रतिनियम, 1947 (1947 का 14) की धारा 17 के अनुमति में, केन्द्रीय सरकार, मैसर्स भारत 2020 GI/92-8

कोकिंग कोल लि. के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (म. 2), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[संदर्भ एल-20012 (210)/90-आई आर (कोल-1)]

वी.के. वेनुगोपालन, डेस्क अधिकारी

New Delhi, the 31st July, 1992

S.O. 2220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (11 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-20012/210/90-IR (Coal-1)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of a reference under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 48 of 1991

PARTIES :

Employers in relation to the management of M/s. B.C.C.L and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Advocate and Shri D. K. Verma, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 20th July, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/210/90-I.R. (Coal-1) dated, the 20th February, 1991.

SCHEDULE

“Whether the action of the management of M/s. Bharat Coking Coal Ltd. Koyal, Bhawan in not giving employment to Shri Raghunath Balmiki and 115 others is justified ? If not, to what relief the concerned workmen are entitled ?”

2. The concerned workmen as per list have claimed for their reinstatement with full back wages. As alleged they have been engaged in the job of cleaning and sweeping in 'D' Block of Bhuli Township where the miners quarters hospitals, dispensaries, school and the offices situate. It is the case of the concerned workmen that they have been working permanently and continuously in the said block. They also claim to have worked for more than 240 days in a calendar year and their retrenchment by the management of the BCCL without notice or without payment of compensation as required under the provision of the Industrial dispute Act was illegal and unjustified. The concerned

workmen claims to be under the direct control and supervision of the management of BCCL. It was stated that one Capt. O. P. Srivastava the then Senior Administrative Officer of Bhuli Township had already written to the management of BCCL that these concerned workmen had been regularly working under his control and supervision. It was further stated that in the year 1981 about 54 workmen were stopped from the duty and the Award was passed in their favour under Ref. No. 48/82. After that the management and the union entered into a settlement for implementation of the Award but the management inspite of the settlement had preferred a Writ Petition before the Hon'ble High Court which was dismissed. The concerned workmen have prayed for their reinstatement with full back wages. In the rejoinder to the W.S. of the management they denied to have ever worked under the Coal Labour Welfare Organisation. It is their persistent claim that they have been working in Block 'D' which always remained under the control and supervision of the BCCL.

3. The management has denied relationship of employer and employee between the management and the concerned workmen and that none of the workmen ever worked under the management of the BCCL. It was stated that Bhuli Township was previously under the management of Coal Mines Labour Welfare Organisation and the administration of A, B and C block of Bhuli Township was handed over to M/s BCCL with effect from 1-10-86 in pursuance of abolition of Coal Mines Labour Welfare Organisation. It is their case that the management has got sufficient number of their own permanent employees and there is no scope for employment of 116 concerned workmen on the job of sweeping and cleaning. There was no contractor under the Coal Mines Labour Welfare Organisation engaging 116 workmen for sweeping and cleaning as alleged by the union. They have failed to produce any paper that they were the workmen engaged by any contractor. They also failed to name any contractor. They did not produce any paper showing payment to them by the contractor and thus the whole of the approach of the union is based upon the imaginary assertion.

4. In view of the pleadings of the parties the point for consideration will be as to whether the concerned workmen were the employees of the management of BCCL where they served in the Bhuli Township as cleaning and sweeping mazdoor in the work of cleaning and sweeping job.

5. Admittedly, Capt O. P. Srivastava was Senior Administrative Officer of M/s. B.C.C.L. The concerned workmen have claimed to have been appointed by Shri Srivastava. WW-1 and WW-2 both have stated that the work of the concerned workmen was supervised by Shri S. N. Singh. I find that no letter of appointment nor any identity card or the payment slip has been filed on behalf of the concerned workmen to show that actually they were appointed by Capt. Srivastava. On the other hand the workmen claim that they worked right from 1978 to 1986 directly under the control and supervision of BCCL. WW-2 Shri R. K. Prasad, President of the Bihar Shramik Sangh has stated that during the period from 1978 to 1986 there was no contractor to look after the work of Sweeping and cleaning under 'D' Block. Ext. M-8 is the annexure to the schedule of the reference in which the names of all the concerned workmen has been mentioned. The attention of the witness WW-1 has been drawn towards the writing that the concerned workmen worked under different contractor. The learned counsel for the management urged that in this way the concerned workmen themselves admitted to have worked under different contractor and thus they being contract labour are not entitled for their regularisation. The witness again stated that he was not in a position to tell the name of any contractor because there was no contractor. In this connection reference may be made to Ext. W-2 which is photo copy of the letter dated 5-8-82 written to Shri U. Mishra, Law Officer, Karmik Bhawan, BCCL, Dhanbad by Capt. O. P Srivastava. That letter was written in connection with Ref. Case No. 48/82. The names of as many as 178 workers have been noted in the letter itself stating that these workers were engaged to work by the different contractor I have compared the names noted under this letter with that of the list of the concerned workmen and found that the names of most of the concerned workmen are included. In this very connection it may be worthwhile to refer Ex. W-4 and W-4/1. Ext. W-4 is a certificate dated 30-7-82 granted by Capt. O. P. Srivastava, Sr. Administrative Officer of Bhuli Township

Administration of BCCL. It was certified that the following workmen were engaged by the contractors for maintenance and repairs of hand pumps, sanitary fittings at Bhuli Township administration. There are 77 names which have been annexed with the certificate. Similarly Ext. W-4/1 is also a certificate granted by Capt. O. P. Srivastava. It is also dated 30-9-82. It was certified that the following workers were engaged to work by the different contractor in sweeping, cleaning, jungle cutting and maintenance of Bhuli Township between the period from October, 1978 to September, 1982. In this certificate there are 75 names. Ext. W-2, W-4 and W-4/1 read together will show that all the concerned workmen except one Shri Banshi Lal Balmiki, Sl. No. 3 of the annexure to the W.S. of the workmen were engaged by the different contractors in Bhuli Township to perform the job of sweeping, cleaning etc.

6. One Tarun Banerjee has been examined as MW-3 who claims to be the registered contractor working in 'D' Block of Bhuli Township since 1982. For the first time in 1982 he got work order and he is still working as contractor. He stated that he engaged a number of labourers but none of the concerned workmen were ever engaged by him. He has been looking after Block 'D' and 'E' which are always manned by the contractors. In Block A, B and C there are permanent sweepers of BCCL. It may be mentioned here that the name of Shri Banerjee does not appear under Ext. W-2 which discloses the name of so many reputed contractors. The concerned workmen served under those reputed contractors as it was evident from the contractors registers. The question is that when they were contractor labour in the year 1982 then there can be no earthly reason as to why they will be wiped out from the roll. This means that they continued to work in the same capacity till they were stopped in the year 1986. In this connection we may examine the veracity of Shri Banerjee who has stated that he did not maintain any register of the workmen serving under him as contract labour. He also stated that the attendance of the workmen are marked on loose paper. It looks very surprising that Mr. Banerjee being a registered contractor never maintained any register of the workmen and he marked their attendance on loose paper. This shows something unconventional and against every norms and procedure. All the aforesaid exhibits on behalf of the workmen are better proof to suggest that the concerned workmen had been working in Bhuli Township though as contractor labour and *prima facie* I have no reason to disbelieve those documents.

7. As regards the evidence of Shri Banerjee he cannot be called a very fair and truthful witness. As per evidence of MW-2 he was selected for two consecutive year to work as contractor of Bhuli 'D' Block but for the third time the management could not decide as to who should be the contractor and the term of Shri Banerjee was extended from time to time and he is still going on. He further stated that after second term there was no tender for selection of contractor and somehow or other Shri Banerjee continued as contractor. In view of the evidence of this witness how it can be said that Shri Banerjee will prove to be a fair and truthful witness. He has been getting favour again and again from the management. As discussed above it appears that the concerned workmen were contractor labour doing the work of cleaning and sweeping work in Block 'D' Bhuli Township. They never stated to have ever worked under Coal Mines Labour Welfare Organisation which was taken over by the management of BCCL sometimes in the year 1986. Here the question arises as to whether under the provision of the Act they can be treated as contractor labour. There is sufficient evidence on the record to show that the work of cleaning and sweeping, dusting and washing are done by the concerned workmen. Undoubtedly these are the type of the work which can be classified as permanent and perennial nature of work. These are the work which should be carried out daily and throughout the year. But according to the contract labour (Regulation and Abolition) Act, 1970 all the work of perennial nature are not to be carried out by a contractor labour. The learned counsel for the workmen has also placed his reliance upon the authority reported in Current Labour Reports Vol. III March, 1990 at page 363. While disposing of the Writ Petition of 1213 of 1985 the Hon'ble High Court of Judicature at Bombay was pleased to refer a notification dated 9-12-76 of the Central Government which prohibited employment of

contract labour on and from 1977 for sweeping cleaning, dusting and washing of the building owned and occupied by the establishment in respect of which the appropriate Government is the Central Government. In this way the Sweeping and cleaning work was not to be done by any contractor labour. In the given circumstances normal and natural consequence would be that the concerned workmen were the employees of the management and they were under the supervision and control of the management. The presumption would be that the contractors were introduced for the namesake and just to jeopardise the standing and genuine claim of the concerned workmen. Even supposing for the sake of argument that they were contractors in reality then whether such contractors were authorised to get the permanent nature of work done by their labourers. Definitely the answer will be in negative. In that view of the matter also they will be deemed to be the employees of the management.

8. WW-1 has stated that they have been discharging all sorts and cleaning and sweeping work of building, drainage and hospitals and roads in 'D' Block of Bhuli Township. According to him they have been discharging the same nature of job as are being discharged by the permanent employees of Block, A, B, C. The nature of the job in Block A, B and C is similar to that of Block 'D' and 'E' and this fact has no where been seriously challenged by the management. On the other hand the evidence of MW-2 will rather support this fact. He has been working as Town Administrator in Bhuli Township and since April, 1981 has been looking after the administration of Bhuli Township. He has stated that Bhuli Township consists of Five Blocks. Blocks A, B and C were taken over from Coal Mines Welfare Organisation and Block 'D' and E were in BCCL from before. This means 'D' Block was in BCCL from before. It be noted that the concerned workmen claim to have been working under 'D' Block alone from the very beginning. The witness further stated that there are permanent employees so far Block A, B and C are concerned to carry out the job like cleaning, sweeping and sanitation. As regards Block 'D' and E they engage contractors to discharge the same type of job. Here we may pause for a moment and think over the matter as to why such distinction in the character of the employees. There is no reason as to why permanent employees will be doing the work of sweeping and cleaning in Block A, B and C and exactly the same type of job in Block D and E will be done by contractor labour on casual basis. The question is that such type of work are to be done everyday throughout the year. MW-1 has stated that the cleaning work of Bhuli Township was done on regular basis. MW-3 Shri Tarun Banerjee also stated that cleaning work is done daily. The evidence of these two witnesses are more than sufficient to show that these are permanent and perennial nature of work and there can be no satisfactory and plausible reason as to why the permanent work will be done by contractor labour.

9. The management has stated that Bhuli Township has got its own permanent employees and such a large number of workers cannot be adjusted there. I think such plea cannot be appreciated nor it can be entertained. The moment it is proved that the concerned workmen have been doing permanent nature of job it is for the management to adjust them and give them employment. In this connection evidence concerning the dimension of the work I may again refer to the evidence of Shri Tarun Banerjee. He has stated in his cross-examination that in D and E block there are more than 2000 quarters of the workmen. The cleaning work of roads and drainage are also done by the workmen concerned. There are about 1000 safety tanks in both the blocks. However, no safety tank is cleaned by the labour of Shri Banerjee. He stated that such work is done only through 35 sweepers. The statement made by Shri Banerjee cannot be appreciated because the cleaning and sweeping of 2000 quarters plus roads and drainage cannot be accomplished daily by a such small number of sweepers.

10. There are some other documents on behalf of the management. Ext. M-1 and M-2 are the letters written to Shri Tarun Banerjee for maintenance and municipal services in Bhuli Township. Ext. M-4 speaks about terms and conditions of service of the employees who were transferred from Coal Mines Welfare Organisation to Coal India Ltd. I find that a few other documents have also been brought on record by the workmen. Ext. W-5 and W-6 are

the notes to the work Supervisor Bhuli Township for getting urgent work done. Ext. W-9 to W-10/1 also are the note of the similar type regarding the cleaning and sweeping.

11. I have examined every aspect of the matter, in this case and after having gone through the evidence both oral and documentary I am constrained to hold that all the concerned workmen (as per the list annexed herewith) except one Shri Bansi Lal Balmiki son of Mala Ram Balmiki were doing permanent nature of job in Bhuli Township from the very beginning and they are entitled for their regularisation by the management of BCCL. It is held and ordered accordingly. As regards the full back wages I find that all these workmen did not go for work, they should have raised their dispute a bit earlier. In the circumstances I do not propose to give any back wages. The management is thus directed to regularise all the concerned workmen except Shri Bansi Lal son of Mala Ram Balmiki in Cat. I within one month from the date of publication of the Award.

This is my Award.

B. RAM, Presiding Officer

LIST OF WORKMEN IN REF. NO. 48/91

1. Sri Raghunath Balmiki S/o Dhanna Ram Balmiki.
2. Smt. Chhoti Devi Mehtarin W/o Late Sonu Ram Balmiki.
3. Sri Banshi Lal Balmiki S/o Mala Ram Balmiki.
4. Sri Ratan Lal Mahato S/o Pyray Mahato.
5. Sri Shankar Kishore S/o Jogeshwar Ram.
6. Smt. Mohini Devi W/o Budha Lal Balmiki.
7. Sri Rameshwar Lal Balmiki S/o Sohan Lal Balmiki.
8. Sri Manna Balmiki S/o Dayal Ram Balmiki.
9. Sri Ram Swarup Balmiki S/o Dhanna Ram Balmiki.
10. Sri Niwas Ram Balmiki S/o Budha Balmiki.
11. Jagdish Balmiki S/o.
12. Shri Hanuman Chandra Balmiki S/o Munna Balmiki.
13. Shri Mohan Ram S/o Kamla Prasad.
14. Sri Kanwar Paswan S/o Mishri Paswan.
15. Sri Bhola Prasad S/o Bacha Prasad.
16. Sri Rabindra Sharma S/o
17. Sri Radha Krishna S/o Chitawan Saw.
18. Sri Dinesh Ram S/o Shoti Ram.
19. Sri Jitwan Ram S/o Kuldip Das.
20. Sri Brihaspat Ram S/o
21. Sri Manoj Kumar S/o Jagdish Singh.
22. Sri Ranjit Prasad S/o Bharat Prasad.
23. Sri Surendra Ram S/o
24. Sri Bishwa Nath Ram S/o
25. Sri Suresh Pandit S/o D/o Dutt Pandit.
26. Sri Kali Ram S/o Ram Autar Rabidas.
27. Sri Balmiki Ram S/o Ram Autar Rabidas.
28. Sri Nageshwar Raut S/o
29. Sri Jalo Rauth (Mehata) S/o Prabhu Mehta.
30. Sri Kanai Saw S/o Hari Charan Saw.
31. Sri Bindeswari Mondal S/o Shyamli Lal.
32. Sri Jogeshwar Raut S/o Mushan Dusad.
33. Sri Krishna Deo Ram S/o Ram Autar Ram.
34. Sri Ramdhani Ram S/o
35. Sri Arun Kumar S/o Ram Krit Singh.
36. Sri Dhananjay Kumar S/o Ram Deo Lal.
37. Sri Daya Kant Ram S/o Ram Bhanju Kanu.
38. Sri Uma Shankar S/o Charitra Thakur.
39. Sri Premi Chandra Balmiki S/o Ratan Ram Balmiki.

40. Smt Parwati Devi W/o Radhey Kishan Balmiki.
 41. Sri Kishan Lal Balmiki S/o Mangal Ram Balmiki.
 42. Sri Bhawar Lal S/o Madhuri Saw.
 43. Sri Sona Ram S/o Payre Mahato.
 44. Sri Hara din Balmiki S/o Rameshwar Balmiki.
 45. Sri Gopal Balmiki S/o Late Navin Balmiki.
 46. Smt. Santra Devi S/o Prakash Chandra Balmiki.
 47. Smt. Chandra Devi W/o Chatrubhuj Balmiki.
 48. Sri Tapan Kumar Deogharia S/o Basdeo Deogharia.
 49. Smt. Koshila Devi W/o Mahabir Ram Balmiki.
 50. Sri Karu Ram S/o Late Sri Saran Rani.
 51. Sri Jagdish Paswan S/o Chitwan Dusad.
 52. Sri Gopal Paswan S/o Lakeshwar Paswan.
 53. Sri Deo Kumar S/o Rai Nath Singh.
 54. Sri Prem Kumar S/o Shyamli Lal Harijan.
 55. Sri Shyam Sunder Singh S/o Late Kameshwar Pd. Singh.
 56. Sri Jagdish Ram S/o Shyamli Lal Harijan.
 57. Sri Jogeshwar Prajapat S/o
 58. Sri Raghu Nandan Pd. S/o.
 59. Sri Surja Narayan Prasad S/o. Babua Pd. Singh
 60. Sri Shiv Narayan Ram S/o. Kameshwar Das.
 61. Sri Subodh Kumar S/o. Kameshwar Pd. Singh.
 62. Sri Ram Chandra Ram S/o.
 63. Sri Shali Gram Pandit S/o Kedar Pandit.
 64. Sri Naresh Prasad S/o.
 65. Shri Ashok Ram S/o.
 66. Shri Bhagirath Saw S/o. Pahalwan Saw.
 67. Shri Radhey Saw S/o Chitwan Saw.
 68. Shri Baleshwar Mondal S/o.
 69. Shri Lotan Mondal S/o.
 70. Shri Uresh Ram S/o. Buttan Saw.
 71. Shri Tanik Mandal S/o.
 72. Shri Jag Narayan Ram S/o
 73. Shri Ashok Kumar Verma S/o. Late Gauri Shankar Prasad.
 74. Shri Kapildeo Prasad Mahato S/o. Ganesh Mahato.
 75. Shri Satyadeo Kanu S/o. Ram Prasad Kanu.
 76. Shri Sachitanand Upadhyay S/o. Bram Deo Upadhyay.
 77. Shri Sheo Lakhan Das S/o. Ram Avtar Rabidas.
 78. Shri Rajash Kr. Sinha S/o. Sri Suresh Chandra Sinha
 79. Shri Rajeshwar Tiwari S/o. Basist Tiwari.
 80. Shri Anjani Kr. Sinha S/o. Bharat Lal.
 81. Shri Mantu Prasad S/o. Maheshwar Prasad.
 82. Shri Shyam Lal Prasad S/o. Ramjee Pd.
 83. Shri Upendra Kr. Singh S/o. Mallik Singh.
 84. Shri Ashok Kr. Singh S/o. Sri Hari Singh.
 85. Shri Dilip Kr. Mahato S/o. Premeshwar Mahato.
 86. Shri Raj Kumar Paswan S/o. Dhuku Paswan.
 87. Shri Balmiki Singh S/o. Rameshwar Singh.
 88. Shri Suresh Pandey S/o. Kedar Pandey.
 89. Shri Manoj Kr. S/o Kedar Pandey.
 90. Shri Tuntun Prasad S/o. Sri Shakti Chand Saw.
 91. Shri Chandra Deo Prasad Singh S/o. Bhunesh Pd. Singh.
 92. Shri Jai Prakash Yadav S/o. Ajbi Yadav.
 93. Shri Kisto Tati S/o. Kedar Tati.

94. Shri Suresh Kr. Saw S/o Ganga Pd. Saw.
 95. Shri Arvind Pd. Singh S/o Srisya Ram Pd. Singh.
 96. Shri Uma Kant S/o. Sri Narayan Lal.
 97. Shri Shambhu Kumar S/o. Sri Jagdish Prasad.
 98. Shri Shashi Bhushan Pd. S/o. Kameshwar Prasad.
 99. Shri Baleshwar Pandey S/o. Jato Pandey.
 100. Shri Semir Kumar S/o. Abohya Kant.
 101. Shri Rabi Ranjan Sinha S/o. Late Laxmi Shukar Sinha.
 102. Shri Manoranjan Kr. S/o. R. P. N. Sinha.
 103. Shri Priya Ranjan Kr. S/o. R. P. N. Sinha.
 104. Shri Mithilesh Chandra S/o. Kharanand.
 105. Shri Sanjoy Kr. S/o. Prabhakar.
 106. Shri Suresh Kumar S/o. Ganga Sah.
 107. Shri Bangeshwar Tiwari S/o. Basist Tiwari.
 108. Shri Mithileshwar Tiwari S/o. Basist Tiwari.
 109. Mana Kr. S/o. Onkar Nath Tiwari.
 110. Shri Sushil Kumar S/o. Sri Kant Tiwari.
 111. Shri Mohitosh Banerjee S/o. Kali Pada Banerjee.
 112. Shri Birendra Kumar Sharma S/o. Late Ram Chandra Sharma.
 113. Shri Subir Kumar Mitra S/o. Sri Baidya Nath Mitra.
 114. Shri Prabhakar Goswami S/o. Anil Baran Goswami.
 115. Shri Rujendra Prasad S/o. Ram Prasad Nonia.
 116. Shri Subash Chanda Chauhan S/o. Late Sitaram Chauhan.
 117. Shri Kant Bajpai S/o. Sri Rishi Bajpai.

B. RAM, Presiding Officer

नवं दिसंबर, 6 मध्यस्थ, 1992

का.आ. 2221—रायोंगिक विवाद अधिनियम, 1947 (1947 का 14) का बारा 17 के अनुसरण में, केंद्रीय सरकार, ईंडियन ओष्ठरसीज बैंक के प्रबन्धताल के संबंध नियोजकों और उनके कमीकारों के बीच, अनुबंध में निर्दिष्ट भौतिकीय विवाद में औष्ठोंगिक अधिकरण, मद्रास के पंचपट का प्रकाशित गर्नी 4, जो केंद्रीय गरेकार का 27-7-92 को प्राप्त हुआ था।

[संख्या 17-12012/420/88-D-IIA]
 की.के. बैण, ग्राम, डेस्क व्रिकारी

New Delhi, the 6th August, 1992

S.O. 2221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Management of Indian Overseas Bank and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-12012/420/88-D-IIA]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Tuesday, the 31st day of March, 1992

Present :

THIRU M. GOPALASWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 25 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Indian Overseas Bank, Madras-2).

BETWEEN

Thiru P. G. Kuttappan, 2, Ayyavu Street, Ayyavu Colony, Aminjikarai, Madras-500 029.

AND

The General Manager, Indian Overseas Bank, P. B. No. 3765, 762, Anna Salai, Madras-600 002.

REFERENCE :

Order No. L-12012/420/88-D.II(A), dated 2-3-1989 of

the Ministry of Labour, Government of India.

This dispute coming on for final hearing on Wednesday, the 4th day of March, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiruvalargal K. M. Venugopal and R. Dakshinamurthy, Advocates appearing for the workman and of Thiru N. G. R. Prasad, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

in

I. D. No. 25 of 1989

This dispute between the workman and the management of Indian Overseas Bank, Madras-2 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/420/88-D.II(A), dated 2-3-1989 of the Ministry of Labour, for adjudication of the following issue :

“Whether the action of the management of Indian Overseas Bank in dismissing from service Shri P. G. Kuttappan is justified? If not to what relief is the workman entitled?”

2. The Petitioner Thiru P. C. Kuttappan in his claim statement states as follows : After he joined the Respondent-Bank as a Punch Card Operator, he was promoted as a Clerk from October, 1986 and later he was working in Aminjikarai Branch. On 13-1-1986, he has drawn money from his savings Bank Account with the said Branch through a withdrawal slip. He did it on the belief that his friend Thiru Shanmugavel would remit the said sum of Rs. 500 into the Petitioner's S. B. account as he promised. He withdraw the said sum to give the same to another friend Mr. Hari as a loan. After Pongal holidays, when contacted, he was told by Shanmugavelu that he had remitted a sum of Rs. 500 into the account of the Petitioner.

3. But it turned out to be otherwise. The Branch Manager Thiru Srinivasan after checking the accounts questioned the Petitioner as to why he withdraw a sum of Rs. 500 from the Savings Bank Account in which the credit balance was only 22 paise on 13-1-1986. Under his instructions, Petitioner paid back the amount into the S. B. Account. Only then he realised that Thiru Shanmugavel failed to remit the money on 13-1-1986. The Disciplinary Authority issued a charge memo to the Petitioner and suspended him on 21-5-86. The charge memo alleged that the Petitioner's withdrawal of Rs. 500 and his connected acts amounted to gross misconduct in terms of para 17.5(d) and 17.5(j) of the Bipartite settlement. The Petitioner gave his explanation alleging that he acted bonafide in withdrawing a sum of Rs. 500 by believing the words of Thiru Shanmugavel who was a co-worker in the same Branch.

4. The Petitioner did not have any dishonest intention at the time of withdrawing the amount. After holding a do-

mestic enquiry, and completing other formalities, the Petitioner has been dismissed from service. His post conduct in the service has been without blemish. The punishment of dismissal is very extreme. Hence the Petitioner prays for an award for reinstating him in service with continuity of service and back wages.

5. The Respondent in its counter states as follows : The misconduct of the Petitioner consists of making fictitious credit entry for Rs. 500 and then withdrawing the same from the S. B. Account maintained at the Aminjikarai Branch of the Respondent when there was only 22 paise to his credit. The Petitioner's case that he gave the sum of Rs. 500 with drawn by him to Mr. Hari and that his co-worker Thiru Shanmugavel promised to pay into the account Rs. 500 on the same day is not proved. This plea was taken belatedly only during the enquiry. He actually remitted the amount into his account only on 21-3-1986 under the direction of the Branch Manager Thiru Srinivasan. The said Thiru Shanmugavel was not examined as a defence witness. The acts of misconduct constitute violation of paras 17.5(d) and 17.5(i) of the Bipartite Settlement. The witnesses examined by the management at the domestic enquiry have amply proved the charges. The punishment of dismissal awarded to the Petitioner is just and adequate. The claim is liable to be dismissed.

6. The point for determination is as follows :

Whether the punishment of dismissal is extreme and disproportionate and is it liable to be modified under section 11-A of the Industrial Disputes Act?

7. No oral evidence was adduced on either side. Exs. M-1 to M-38 have been marked by consent. Arguments were advanced by both sides.

8. POINT : The major act of misconduct is that the Petitioner withdraw a sum of Rs. 500 from the Savings Bank Account maintained at the Aminjikarai Branch wherein he was working as a clerk on 13-1-1986, by overdraft. He is also said to have fraudulently struck off the entries in the relevant books in order to destroy evidence. He himself posted the withdrawal slip entries in the ledger book and received the money fraudulently with an intention to cause damage to the property of the respondent Bank. The charge sheet Ex. M-4 gives the details of the acts of misconduct and the paras under which they are punishable.

9. At the domestic enquiry, the Petitioner has been given full opportunity to defend himself. The domestic enquiry officer in the findings marked as Ex. M-20 has found that the charges have been proved. Thereafter the disciplinary authority has accepted the findings and issued a show cause notice to the Petitioner. It is Ex. M-21. After hearing the Petitioner's personal representations, the disciplinary authority issued the order of punishment under Ex. M-26 for dismissing the Petitioner from service without notice.

10. The learned counsel for the Petitioner has pleaded only for a reduction of the punishment on the contention that the punishment of dismissal is extreme and disproportionate. Petitioner's learned counsel has cited the case between the management of Madras Fertilizers Ltd., Manali, Madras vs. Kannammal and others decided by the Madras High Court and reported as 1990-I-L.L.J. 298. In this decision, the learned Judge of the Madras High Court has held that the punishment given to an employee should be commensurate with the gravity of misconduct and should have been given after duly considering the past record of the employee. In the present case before us, the charge-sheeted employee Thiru P. G. Kuttappan has served in the Bank prior to the time of misconduct for 14 years without giving room for any complaint and with sincerity. He has a family which includes two aged parents and two children. The major act of misconduct is that he withdraw a sum of Rs. 500 from his Savings Bank Account by way of overdraft. This is a small loan taken on the sly. On consideration of facts and circumstances, I hold that the main charge of misconduct is not very grave and at any rate it will not justify dismissal from service. I therefore find that the order of dismissal is liable to be modified under Section 11-A of the Industrial Disputes Act and

that the Respondent is liable to reinstate the Petitioner in service giving him continuity of service with full back wages along with other benefits. The Respondent is given liberty to impose upon the Petitioner any minor punishment such as suspension or stoppage of increments.

11. In the result, an award is passed directing the Respondent to reinstate the Petitioner in service giving him full back wages and continuity of service with all attendant benefits. No costs.

Dated, this 31st day of March, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For Workman : Nil

For Management :

- Ex. M-1/27-3-86—Letter from Management Bank to the Regional Office of the Bank informing the irregularities committed by the Petitioner-workman in his S.B. Account with enclosures (xerox copy).
- Ex. M-2/11-4-86—Investigation Report from Regional Office of the Management-Bank (xerox copy).
- Ex. M-3/29-4-86—Letter from the Regional Office of the Management-Bank to the Petitioner-workman calling for his explanation (xerox copy).
- Ex. M-4/21-5-86—Chargesheet issued to the workman (xerox copy).
- Ex. M-5/7-6-86—Letter from the workman to the Disciplinary Authority of the Management-Bank (xerox copy).
- Ex. M-6/11-6-86—Letter from the Disciplinary Authority to the workman granting 15 days time to submit his explanation (xerox copy).
- Ex. M-7/23-6-86—Explanation by the workman to the charge sheet (xerox copy).
- Ex. M-8/3-7-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-9/14-7-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-10/19-7-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-11/6-8-86—Proceedings of the Enquiry Officer (xerox copy).
- Ex. M-12/9-8-86—Enquiry Notice issued to the workman (xerox copy).
- Ex. M-13/29-8-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-14/6-9-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-15/11-9-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-16/27-9-86—Enquiry Notice issued to the workman (xerox copy).
- Ex. M-17/6-10-86—Proceedings of the Enquiry Officer (Copy).
- Ex. M-18/31-10-86—Letter from the Enquiry Officer to the workman granting time to submit his explanation (xerox copy) with acknowledgement.
- Ex. M-19/8-11-86—Defence summing up of enquiry proceedings (xerox copy).
- Ex. M-20/3-12-86—Findings of the Enquiry Officer (xerox copy).
- Ex. M-21/4-12-86—Show Cause Notice issued to the workman (xerox copy).

- Ex. M-22/6-12-86—Letter from the Disciplinary Authority to the Dy. General Secretary, All India Overseas Bank Employees Union, Madras (xerox copy).
- Ex. M-23/9-12-86—Letter from Management-Bank to the Disciplinary Authority confirming the delivery of Show Cause Notice to the workman (xerox copy).
- Ex. M-24/12-12-86—Show Cause hearing before the Disciplinary Authority (xerox copy).
- Ex. M-25/26-12-86—do—
- Ex. M-26/27-12-86—Dismissal order issued to the workman (xerox copy).
- Ex. M-27/5-1-87—Letter from Management-Bank to the Disciplinary Authority informing the service of dismissal order to the workman (xerox copy).
- Ex. M-28/9-2-87—Letter from the workman to the Appellate Authority (xerox copy).
- Ex. M-29/16-2-87—Reply by the Appellate Authority to Ex. M-28 (xerox copy).
- Ex. M-30/23-3-87—Letter from the Workman to the Appellate Authority requesting him to permit him to submit his appeal in writing (xerox copy).
- 7x. M-31/1-5-87—Appeal against the order of dismissal passed by Disciplinary Authority against the workman (xerox copy).
- Ex. M-32/3-8-87—Letter from Appellate Authority to the workman (xerox copy).
- Ex. M-33/11-11-87—Order of the Appellate Authority confirming the dismissal order (xerox copy).
- Ex. M-34/25-1-88—Petition u/s 2-A of the I. D. Act filed by the workman before the Assistant Labour Commissioner (Central) Madras. (xerox copy).
- Ex. M-35/25-1-88—Comments of the Management book on the representation of the workman (xerox copy).
- Ex. M-36/6-7-88—Conciliation Failure Report (xerox copy).
- Ex. M-37/2-3-89—Order No. L-12012/420/88 D.II(A) Ministry of Labour, Govt. of India (xerox copy).
- Ex. M-38/10-3-89—Summons issued to the parties (xerox copy).

M. GOPALASWAMY, Industrial Tribunal

नई दिल्ली, 6 अगस्त, 1992

का.आ. 2222—आद्योगिक विवाद प्रबिन्दियम, 1947 (1947 का 14) की घारा 17 के भनुमरण में, केन्द्रीय सरकार, पंजाब प्रदेश में प्रश्नावाल के सबद्ध नियोजकों और उनके कर्मचारों के बाष्प, अनुबंध में निर्दिष्ट आद्योगिक विवाद में केन्द्रीय सरकार आद्योगिक प्रविकरण, चंडीगढ़ के पंचांग को प्रकाशित करती है, जो केन्द्रीय सरकार की 27-7-92 प्राप्त हुआ था।

[संख्या एन-12012/16/84-डॉ-2 (प.)]

वी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 6th August, 1992

S.O. 2222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their

workmen, which was received by the Central Government on 27-7-1992.

(No. L-12012/16/84-D2A)

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I. D. 4188

Ravi Kant Vs. Punjab & Sind Bank

For the workman : Shri Mangat Sharma.

For the management : Shri J. S. Bawa.

AWARD

Central Govt. v de gazette notification No. L-12012/16/84-D. II(A) dated the 3rd February 1988 issued U/S 10(1)(d) of I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab & Sind Bank in terminating the services of Shri Ravi Kant, Peon with effect from 20-12-1983 is justified ? If not, to what relief is the workman entitled ?"

2. In the statement of claim it was alleged by the workman that he was appointed in the bank on 13-6-83 after qualifying the interview test held by the Bank on probation. During the probation period there was no complaint against the work and conduct. It was further alleged that his services were terminated abruptly on 20-12-1983 the date on which he had completed six months of service and this termination is illegal and unjustified on the ground that the order is abnoxious in character and is not a speaking order as no reason was given and termination was also done by the Chief Manager and not the D.G.M. who was his appointing authority and the termination is violative of Para 522 of Sastri Award and termination was also done without notice or pay in lieu of notice. It was further alleged that he was appointed against permanent vacancy and other persons viz. Viram Singh, Shil Pal, Parveen Kumar, Mukand Lal and Suresh Kumar who are junior to him are still working in the Bank. It was further alleged that there is violation of para 495 of the Sastri Award and prayed for the reinstatement with the benefit of continuity of services w.e.f. 20-12-1983.

3. The claim of the workman was contested by the bank in written statement. The preliminary objection was taken that the termination was legal and also in terms of contract of employment during the probation period and the management is within its right by virtue of the contract of employment to determine the period of probation and as such the dispute is not maintainable. On merits it was pleaded that there is no complaint against the workman about his work and conduct during the probation period but his work was found unsatisfactory. The respdt. bank denied that the termination is illegal. Further stand was taken that his period of probation was determined due to his unsatisfactory performance. Other contentions were denied and prayed for the dismissal of the reference.

4. The petitioner filed replication reasserting the claim statement.

5. In support of his case the petitioner filed his affidavit Ex. W1 in evidence in which the same facts were repeated and the main plea was taken that when he had completed probation on 20-12-1983 he was deemed to be confirmed in the service of the bank. It was further alleged in the affidavit that neither any notice nor pay in lieu of notice was given to him while terminating his services. It was further alleged that during the period of his service the management neither gave him any memo or charge sheet or any adverse remarks with regard to the performance or about his conduct. He also produced himself as WW1 and also relied Ex. W2

the termination letter. In cross examination he has admitted that he had put in 183 working days. He has also admitted that his probation was for a period of six months. He has also stated that the persons junior to him are still continuing.

The Respdt. management produced Harpreet Singh manager as MW1 who filed his affidavit Ex. M1 in evidence and documents Ex. M2 the appointment letter and Ex. M3 the termination letter. In affidavit he has deposed that the petitioner had not completed 240 days and his appointment was on probation for a period of six months and it is within prerogative of the bank terminating the contract of employment during the probationary period. In cross-examination he has shown the ignorance about retaining of the persons junior to the workman.

Both parties have addressed arguments and the same has been gone through and the record perused.

In support of the case the rep. of the petitioner has strongly contended that the probation period of the workman had already completed by 20-12-1983 and in such situation the petitioner was deemed to have been confirmed in the service of the Bank and also referred para 495 of Sastri Award and 21-18 of the Desai Award. The contention of the rep. of the workman is devoid of any force. The provisions of Sastri Award was modified by Desai Award was no help to the petitioner as they are instructive and not mandatory. In the appointment letter Ex. M2 it is none of the condition that at the end of probation period the petitioner obtain confirmation automatically even if no order is passed on that day. Rather it is contrary and it states that during the probation period his services can be terminated at any time without assigning any reasons. It further states that after probation period you will be confirmed in bank service subject to satisfactory report about your work. This indicate that the appointment letter does not prescribe automatic confirmation but requires a separate letter for confirmation. Further it is settled law as laid down in 1989(1) L.L.J. page 161 Popat Lal Vasudev Vyas and Gujarat Water Supply and Sewerage Board and others, wherein it has been held that where the petitioner is appointed as a probationer and probation period is specified it does not follow that at the end of the specified period he obtain confirmation automatically even if no order is passed in that behalf unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or there is service rules to that effect, the expiration of the probation period does not necessarily lead to confirmation. In AIR 1972 S.C. page 873 Kedar Nath Behal Vs. State of Punjab and others it has been held that where a person is appointed as probationer in any post and period of probation is specified, it does not follow that at the end of the specified period he obtain confirmation automatically even if no order is passed on that behalf. Further in terms of the appointment letter Ex. M2 the terms of the employment was only for six months on probation or for a longer period if considered by the Bank and further it is in the entire discretion of the bank to confirm or terminate his services at any time without assigning any reason certainly falls in the exception clause bb of Section 2(oo) of the I.D. Act. It provides that if termination is carried out in terms of the contract by payment of notice pay same would not amount to 'retrenchment'. 1991 INDIAN FACTORY JOURNAL, page 606 K.A. Barot Vs. State of Gujarat (S.C.) can be read in this regard.

Another plea raised by the petitioner that appointing authority of the petitioner was Deputy General Manager but the services of the workman have been terminated by the Chief Manager who is subordinate to D.G.M. This arguments is also devoid of any force. The petitioner was not the permanent employee of the Respdt. bank, he was only a probationer who has no right to the post. So this arguments is rejected.

In view of the discussion in the earlier paras the action of the management in terminating the services of the petitioner is justified and no interference is called for. However the petitioner is entitled for one month salary in lieu of notice if already not paid. Reference is returned accordingly.

Chandigarh.

Dated : 19-5-92

ARVIND KUMAR, Presiding Officer

तदै दिल्ली, 23 जुलाई, 1992

का.आ. 2223—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार रूपरूप हेतु दर्शित, नजफगढ़ के प्रबन्धकार ने तबदू नियोजकों और उसके कर्मकारों के बीच प्रनुबंध में निर्विद्य ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक ग्राम्यकरण तदै दिल्ली के प्रबन्ध का प्रबन्धित करता है जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[प. एन-42012/81/89-आई जार (डा.यू.)]

के.वा.बी.उर्जा, डेस्क ग्राम्यकारी

New Delhi, the 28th July, 1992

S.O. 2223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rural Health Training Centre, Najafgarh and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/81/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 138/89

In the matter of dispute between :

Kumari Shanta Devi,
Clerk, Rural Health Training Centre,
Najafgarh.

Versus

The Officer Incharge,
Rural Health Centre,
Najafgarh, New Delhi.

APPEARANCES :

Shri V. K. Gupta—for the workman.

Dr. Chakravarty—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/81/89-IR(P.U.) dated nil has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Chief Medical Officer, Rural Health Training Centre, Najafgarh, New Delhi in terminating the services of Kumari Shanta Devi, I.D.C. w.e.f. 6-2-86 is legal and valid. If not, to what relief the workman is entitled to?”

2. Kumari Shanta Devi, Clerk, Rural Health Training Centre, Najafgarh, New Delhi in her statement of claim has alleged that she was appointed through Employment Exchange as I.D.C. w.e.f. 24-4-83 by the Officer Incharge of the Rural Health Training Centre, Najafgarh, New Delhi. She worked in the said Centre continuously upto 5-2-86 without any break to the utmost satisfaction of her superior on 6-2-86. Her services were abruptly terminated without justification on the plea that Shri N. Shiva Prashadan, I.D.C. who was on deputation had come back vide R.H.T. Centre's letter dated 7-2-87. She has further alleged that in her letter of appointment there was no mention that she was appointed against any post which had fallen vacant because of Shri N. Shiva Prashadan's going on deputation so the reason given in the order of termination was baseless and wrong. Her services were illegally terminated with mala fide intention and against principle of natural justice.

3. One Pushpa Rani, Peon in the Centre was promoted as clerk on purely temporary and ad-hoc basis on 1-11-85 for 3 months and again extended for three months i.e. upto April, 1986. The position of the seniority of the clerks in the above mentioned Centre as on 5-2-86 shows that the applicant-workman was senior to Kumari Pushpa Rani who was promoted on temporary basis. On the return of N. Shiva Prashadan from deputation Miss Pushpa Rani should have been reverted back to the post of Peon but on the contrary Shanta Devi's services were terminated. Miss Pushpa Rani was later reverted to the post of Peon on 1-5-86 and the post of L.D.C. remained vacant till 25-8-88 when one Kumari Praveen Kumari was appointed as LDC against this vacancy on compassionate grounds i.e. death of her father. There was thus no ground for termination of Shanta Devi and it was a violation of the provisions of the I.D. Act and she deserves to be reinstated with full back wages.

4. In reply the management alleged that three posts of L.D.C. were sanctioned in this Centre. In February, 1983 two vacancies fell vacant on short term basis one consequent upon the proceeding of earned leave for 49 days by Shri Ramesh Kumar Bhatia, Hindi Typist and the other against Shri S. Prasad consequent upon his selection as U.D.C. on deputation basis to the office of Food Research and Standardisation Laboratory, Ghaziabad. Requisition was sent for the two vacancies to the Employment Exchange, Darya Ganj and many candidates were sponsored including the workman. She was selected and offer of appointment on ad-hoc basis was sent to her on 13-4-83. In the letter of appointment it was made clear that her appointment to the post of I.D.C. in this Centre would not confer any title to permanent post and that her services could be terminated at any time without any reason or notice. On these terms she joined as LDC. The other post of LDC was filled up by promoting Miss Pushpa Rani from the post of Lady Attendant-cum-Peon. She joined her duty on 1-11-85. In February, 1986 it was intimated by the department where N.S. Prasad, L.D.C. had gone on deputation that his services were no longer required and he was being relieved w.e.f. 6-2-86 to join his Centre after completion of his deputation period. There was no post vacant at that time and there was no other alternative except to terminate the services of junior person in the grade of LDC i.e. either to terminate the services of Shanta Devi or to revert Kumari Pushpa to her original post of Peon. Pushpa Devi was not reverted but instead thereof Shanta Devi's services were terminated and Pushpa Rani continued after her upto 30-4-86 and she was reverted on 1-5-86. The Rural Health Training Centre, Najafgarh was subordinate office of the Ministry of Health and Family Welfare and was governed by the Rules and Regulations issued by the Government of India from time to time and was not covered in the Industrial Disputes Act. Such cases were to be presented under the Central Administrative Tribunal instead of Industrial Tribunal. The posts on regular basis are filled by selection by the Staff Selection Board and all the posts of LDCs in the said grade were filled up at present.

5. The Management examined Dr. S. Chakravarty, C.M.O. Najafgarh while Shanta Devi appeared herself as WW1.

6. I have heard representative for the parties and have gone through the record.

7. Representative for the management Dr. Chakravarty has urged that the appointment letter given to the workman clearly stipulated that her appointment was purely temporary and could be terminated at any time without assigning any reason or notice. It was on these terms that she joined the service and her appointment was governed by the Central Government Rules and not governed under the Industrial Disputes Act. At best she could have gone to the Central Administrative Tribunal for any relief and this Tribunal could not look into the illegality or otherwise of this termination and no right had vested in her to seek protection of the I.D. Act.

8. Representative for the workman on the other hand has urged that she has admittedly worked for 3 years without any break and her abrupt termination of service without compliance of section 25-F of the I.D. Act amounted to re-trenchment for which no compensation or notice was given. The person junior to her were retained in service for a period

of more than two months after her termination. This was a clear cut violation of the terms and conditions of the Industrial Disputes Act and the workman who was regular employee deserve to be absorbed on regular basis. She should therefore, be held illegally terminated and reinstatement with full back wages may be ordered to be paid to her.

9. A careful perusal of the points urged leads me to the main point that this Health Centre is subordinate office of the Government of India Ministry of Health. Any appointment of clerical nature and above was governed by the rules of the Government of India and any recruitment made through Employment Exchange does not entitle any employee to claim permanency on that post. The appointments to these posts are made to the Selection through the Selection Board and not direct by any Centre or its Head. In the appointment letter it was clearly written that her services were purely temporary and could be terminated without any notice. The vacancy has been filled due to the going on deputation of I.D.C. already working there and the procedure of the Government for inviting candidates from the Employment Exchange had been followed. The employment given by the Employment Exchange in any Government Department where the Civil Service Rules were applicable does not entitle to that employee to the protection of I.D. Act and the right forum for him is only Central Administrative Tribunal the door of which he should have knocked. I, therefore, do not find any ground to interfere regarding the termination of the workman and order that the workman is at liberty to go to the Appropriate forum for redress of her grievance. Parties are left to bear their own costs.

GANPATI SHARMA, Presiding Officer

July 3, 1992.

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2224—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार से पी डब्ल्यू डी, नई दिल्ली के प्रबंधनव के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में 'नियिट श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक अधिकारण, नई दिल्ली के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[म. एल-42012/86/88-डी-II(वी.)]

के.वी.वी. उणी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of CPWD, New Delhi and their workmen, which was received by the Central Government on 27th July, 1992.

[No. L-42012/86/88-D.II.B]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 52/89

In the matter of dispute between :

Shri Radhey Lal S/o Shri Banwari Lal,
House No. 1231, Kucha Patiram,
Bazar Sita Ram, Delhi-6.

Versus

Executive Engineer,

2020 GI/92-9

'A' Division,
Central Public Works Department,
Indraprastha Bhawan,
Indraprastha Estate,
New Delhi-110002.

APPEARANCES :

Workman—in person.
Shri U. M. Kalra—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/86/88-D-2(B) dated 24th May, 1989 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of CPWD 'A' Division, New Delhi in terminating the services of Shri Radhey Lal S/o Late Shri Banwari Lal w.e.f. 16th December, 1979 is justified? If not, to what relief the workman is entitled?"

2. Radhey Lal workman in his statement of claim alleged that he joined the service with the management vide letter dated 26th March, 1973 as Baledar after due procedure. Initially, he was getting Rs. 70 as salary and was posted at IA sub-division. He at his initial place of posting was shocked to find that two Jr. Engineers, namely Shri Harish Chand and Shri Mateen, along with Shri Lajpat Rai, Head Clerk, were indulging in immoral and illegal activities like drinking and womenising in the office premises after office hours. They also used to retain the workman for keeping watch over outsiders who might come unexpectedly. The workman protested against such activities and informed the superior officers and was then transferred to 2A sub-division because of the influence of the said persons and without payment of salary for September, October and November, 1973. Even after the said transfer the management continued to harass the workman and the said officers were marking time and looking for an opportunity to victimise the workman because of his courage to complain against his superior officials. In 1975 the workman fell ill seriously and he started sending his leave application supported by medical certificate. After recovery he reported for duty but to his horror he was not allowed to join the duties. Vide application dated 29th April, 1976 he asked for opportunity to see Assistant Engineer but no opportunity was given. He continued writing letters to report for duty but was not allowed. With great difficulty he submitted his joining report on 10th October, 1977 and informed the same fact to the Assistant Engineer, 3A, Sub-Division. In the meantime an alleged charge sheet was served upon him and with vague and wild allegations without any specific particulars. The mis-conduct alleged to have been indulged in by the workman were also not covered by the service conditions applicable to the workman. His services were terminated without any enquiry after the said charge sheet which clearly showed the mala fide and vindictive attitude of the management towards the workman. However, he filed an appeal against the said termination order which was allowed by the Appellate Authority and the order was reversed. An opportunity of hearing was also ordered to be given to the workman and proper departmental enquiry as per rules/service conditions was ordered. The dismissal had been set aside but salary was still not paid to the workman despite the specific demand vide letter dated 10th July, 1971. An enquiry was held but the same was merely an eye wash and a formality for victimising the workman. The Enquiry Officers were biased. The presenting officer asked leading and suggestive questions to the witnesses for management. The Presenting Officer was an Engineer who was well conversant with the enquiry proceedings and no well versed employee was willing to represent the workman. The workman because of his financial condition was not in a position to engage the services of a legally qualified person during enquiry. Workman was not given the documents which were material for the enquiry and which were within the exclusive possession of the management despite asking for the same. The finding of the Enquiry Office were not correct and were liable for reversal. The workman further alleged that even assuming, though not admitting, that the charges levelled against the workman stood proved even then the penalty of dismissal was not called for and was clearly disproportionate to the facts and circumstances of the case.

3. After receiving the enquiry report from the Enquiry Officer the management sent a notice to the workman regarding the proposed punishment of dismissal to which he sent a detailed reply. No action was taken on the finding of the alleged enquiry for four years and the workman was continuously harassed. He was transferred many times from one place to the other and every attempt was made to stop him from returning the duties and submitting the joining report. The management finally passed the dismissal order and notice was served on the workman. The said dismissal order was passed retrospectively and was effective from 16th December, 1979 whereas the dismissal letter was passed on 7th December, 1983. The management could not pass the retrospective dismissal order which was contrary to statutory rules regulations and to establish provisions of law. The workman deserves to be reinstated in service as the termination was illegal with full back wages and continuity of service.

4. The management in its written statement alleged that the claim petition was not maintainable because similar petition on the same cause of action has been dismissed by this court in LCA No. 30/80 and LCA No. 8/83. The Hon'ble High Court has also dismissed a Civil Appeal and his claim deserves to be dispensed. On merits it was alleged that the workman absented himself from service of the respondent in the month of September, October and November, 1973. He did not have any leave to his credit and he joined duty after 4 to 5 months. The Management condoned his mistake and granted him extra ordinary leave and it was also denied that the Sr. Engineer and the Head Clerk were indulging in unsocial activities in the premises of the office and the allegation was only scandalous. No complaint was made by him. It was also denied that the petitioner was not allowed to resume duty without any reason. He had absented from duty from a longer spell. Charge sheet was also issued to him and his services were terminated. He was given another chance to disprove the allegations against him and the dismissal order dated 26th November, 1977 was withdrawn. He was allowed to appear in the enquiry proceedings which was conducted in a fair and legal manner. No illegality was committed in the enquiry proceedings. He was heard on the question of quantum of punishment and the dismissal order was passed by the competent authority.

5. I have heard representative for the parties and have gone through the record.

6. The representative for the management has urged that the services of the workman were terminated due to his unauthorized absence from duty and there was nothing on record to suggest that management was vindictive against him and his services were terminated only on illegal grounds and in an illegal manner. He has further alleged that Civil Writ petition No. 308/85 was filed by the workman in Delhi High Court which was dismissed. The representative has further urged that the workman was precluded from instituting any fresh claim in respect of such subject-matter which has already been dismissed by the Hon'ble High Court which fact he has admitted in his cross-examination wherein he stated that he has filed writ petition in the High Court in respect of this very claim and he was trying to undo the judgment of the High Court by filing this I.D. and other ICAs. The workman had absented from duty for 3 months when he had no leave to his credit but as a gesture of goodwill the management condoned his mistake and granted extra-ordinary leave to him. Nothing wrong could be found by the workman in the enquiry proceedings and the management has established that the enquiry was fair and proper and the services were terminated according to rules.

7. The workman in his written arguments has not urged anything except reiterating the facts stated by him in the statement of claim. No ground has been shown in his arguments except that he has been harassed by the management for his having made complaints against senior officers.

8. A careful perusal of the points urged by the workman and the representative for the management, I am of the considered opinion that a proper departmental enquiry was conducted in this case and services of the workman were terminated after giving him due opportunity. No illegality has been brought to my notice by the workman and no such illegality

has been brought out in the written arguments submitted by him. In his statement of claim he has only urged that even though if the enquiry was found to be fair the punishment granted to him was very harsh. I have applied my mind to the circumstances of this case and the points urged before me and the record produced. The workman has admitted that he had gone to the Hon'ble High Court on this very point and his petition has since been dismissed. I do not find any reason to interfere in the punishment awarded to him as the matter as stated by the workman himself has been looked into by the Hon'ble High Court and the workman himself has also not stated this fact in his statement of claim when he came to this court. He should have come with clean hands and should have stated that he had filed a writ petition in the Hon'ble High Court a copy of the same dated 3rd May, 1985 vide which the petition of the workman was dismissed has been placed on record and it states that due to serious dispute question of facts it would not be proper for the Hon'ble High Court to go into them under Article 226 of the Constitution. Leaving aside this aspect the points brought out by the management clearly establish that there is no illegality on the part of the management established in this case on the basis of which the dismissal/termination of his services could be interfered with by this Tribunal. I, therefore, order that the order of termination of services was legal and no interference was called for. Parties are, however, left to bear their own costs.

June 23, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली 29 जुलाई 1992

का.आ. १०५—श्रीद्वितीय विवाद अधिकार, १९४७ (१९४७ का १४) के धारा १७ के अनुसार से, नेत्रिय सरकार सो एम एम (एम टी आर) किदवी भवन, भई दिल्ली, वे प्रबंधन के संबद्ध नियमों और उनके कार्यालयों के प्रबंध अभियान में विविध श्रीद्वितीय विवाद में देशभूमि सरकार श्रीद्वितीय अधिकारण, नई दिल्ली के प्रबंध का प्रकाशित करते हैं, जो केवल द सरकार का २७-७-९२ का प्राप्त हुआ था।

[T ए-10012/33/88-डी-II (बो)]

के द्वारा उपर्युक्त दस्तावेज़ का प्राप्त हुआ था।

New Delhi, the 28th July, 1992

S.O. 2225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.M.M. (MTR) Kidwai Bhawan, New Delhi and their workmen, which was received by the Central Government on 27th July, 1992.

[No. L-40012/33/88-D.II-B]
K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 44/89

In the matter of dispute :

BETWEEN

Shri Chotey Lal S/o Shri Bankey Lal, resident of P&T Tents Tibia College Compound, Afnal Khan Road, Karol Bagh, New Delhi.

VERSUS

1. The G.M.M. (MTR), Kidwai Bhawan, 2nd floor, Janpath, New Delhi.

2. Asstt. Divisional Engineer, Telecommunications, Microwave Maintenance, B-Block, New Rajinder Nagar, New Delhi.
3. The Ministry of Telecommunication through its Secretary, New Delhi.

APPEARANCES:

Miss Bharti—for the workman.

Shri M. M. Kalra—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/33/88-D.II(B) dated 24th April, 1989 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of G.M.M. (M.T.R.) Kidwai Bhawan, Janpath, New Delhi in terminating the services of Shri Chhote Lal, daily rated mazdoor is justified? If not to what relief the workman is entitled to?"

2. The workman Chotey Lal in his statement of claim alleged that he was appointed as a Helper on 21-10-85 by the department of Telecommunication and was posted under the Assistant Divisional Engineer. The work done by the applicant was of permanent nature and, therefore, he worked on the post of helper from 21-10-85 to 27-7-87. His services were terminated vide order dated 22-7-87. He had been recruited from Employment Exchange and his termination was in disregard to the provisions of section 25-F of the I.D. Act which stipulates that the retrenchment compensation has to be paid before termination of the services. He has already worked for one year and 7 months and all casual workers who have worked for more than 240 days have to be absorbed and their services cannot be terminated. The services have been terminated illegally and another worker, Shri Shyam Singh Rawat who was also working in the capacity of the petitioner was terminated in similar circumstances and he approached to the Central Administrative Tribunal where his claim was allowed and the order of termination was quashed vide judgment dated 23-12-88. The workman termination be also set aside and he may be reinstated with consequential benefits.

3. The Management in its reply alleged that that the workman has not come to the court with clean hands and has tried to conceal material facts. A notice dated 17-6-87 on the workman was served where he was informed about his retrenchment as per provisions of section 25F of the I.D. Act. He was originally recruited on casual basis and his services were terminated after one month's notice. After observing all necessary formalities. The Hon'ble Supreme Court had ordered to the department to finalise rational scheme for absorbing the casual labourers working for more than one year and the workers employed after 30-3-85 were not covered under the scheme of regularisation. The workman, therefore, could not be adjusted as daily rated mazdoor even in the said scheme.

4. The management in support of its case examined Shri K. C. Aggarwal, DET Jaipur MW1 while Shri Chotey Lal workman himself appeared as WW1.

5. I have heard the representative for the parties and have gone through the record.

6. The representative for the workman has urged that the termination of the workman was illegal because of the violation of section 25-F of the I.D. Act. No notice of compensation was given as stated by the workman in his statement of claim as well as in his affidavit. He has referred to the Central Administrative Tribunal judgment in case Shyam Singh Rawat Vs. U.O.I. vide which he was ordered to be reinstated. He has also referred to a copy of the judgment in a writ petition of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has directed the respondents to prepare a scheme on rational basis for absorbing as far as possible the causal labourers who have been

continuously working for more than one year in the Posts and Telegraphs Department. The workman should have been absorbed as per that direction, and he now deserves to be reinstated with full back wages.

7. On careful perusal of the points urged I am of the view that there is no compatibility between the case Shyam Singh Rawat decided by the Central Administrative Tribunal and this case. That Tribunal has to take decision on the merits of the case while this Tribunal has to decide the case on the basis of the evidence produced before it. The judgment of the Hon'ble Supreme Court is also regarding a scheme to be formed in the Posts and Telegraphs Department. This department of the workman is Telecommunication Department and it has been stated that a scheme was framed and the workman did not fall in that scheme. There is no order of the Hon'ble Supreme Court in particular regarding this workman to be absorbed in the said scheme. Moreover, the only ground on which the workman termination has been challenged is that violation of section 25-F of the I.D. Act was committed. It has been stated on oath by the management witness and has been so stated in the affidavit that one month notice was given to the workman prior to the termination which was the requirement of section 25-F. Annexure I is the copy of the said notice which is signed by this workman as well as one of his colleague Harish Chander Bhatt. There is thus no violation of any provision of the I.D. Act on the basis of which the order of termination of the workman could be set aside and the workman could be reinstated. I, therefore, hold that the order of the management terminating the services of the workman was justified and he was not entitled to any relief.

Parties are left to bear their own costs.

July 2, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 जलाई, 1992

का.आ. 2276.—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसार मेन्ट्रल सोसाइटी व वाटर कलरेबेन रिसर्च और ट्रेनिंग सेंटर, उद्घामांगलम के बंधतंत्र के संग्रह नियाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीयोगिक विवाद में केन्द्रीय सरकार श्रीयोगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[म. एल-42011/19/91-आई आर (डी यू)]

केंद्रीय सरकार के द्वारा उपरोक्त अधिकारी

New Delhi, the 28th July, 1992

S.O. 2226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Soil and Water Conservation Research and Training Centre, Udhagamangalam and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42011/19/91-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,
MADRAS

Monday, the 13th day of July, 1992

PRESENT:

Thiru M. Gopalawamy, B.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 71 of 1991

[In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Central Soil and Water Conservation Research and Training Institute, Research Centre, Fernhill P.O. Udhagamandalam-643004.]

BETWEEN

The workmen represented by the President, Electricity and General Employees Progressive Union 80, Cross Bazar, Coonoor-2, The Nilgiris.

AND

The Officer-in-Charge, Central Soil and Water Conser-

vation Research and Training Institute, Research Centre, Fernhill P.O. Udhagamandalam-643004.

REFERENCE:

Order No. L-42011/19/91-IR(DU), dated 30-10-91 of the Ministry of Labour, Government of India New Delhi.

This dispute coming on this day for final disposal in the presence of Thiru A. Ashokan, Advocate appearing for the workmen upon perusing the reference, claim statement and other connected documents on record and the management being absent and set ex parte, this Tribunal passed the following:

AWARD

This dispute between the workmen and the management of Central Soil & Water Conservation Research and Training Institute, Research Centre, Udhagamandalam arises out of a reference under section 101(1)(d) of the Industrial Dispute Act, 1947 by the Government of India in its Order No. L-42011/19/91-IR(DU), dated 30-10-1991 of the Ministry of Labour, for adjudication of the following issue:

"Whether the management of Central Soil and Water Conservation Research & Training Institute is justified in not regularising the services of 54 workmen (list enclosed)? If not, what relief they are entitled to and from what date?"

Revised consolidated seniority list of mazdoors based on total number of days present right from their year of entry.

Sl. No.	Name	Father's name	Year of entry	Total No. of days from year of entry upto 31-12-1988	SC/ST/BC.	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1. Smt. M. Nanjamma	Madan		1974	3853	SC	
2. Smt. Pappamma	Ponnuswamy		1974	3681-1/2	SC	
3. Smt. Chandrasekhar	Magickam		1975	3549	SC	
4. Sri S. Lakshmanan	Sirangi Gowder		1976	3298-1/2	—	
5. Sri K. Nanjan	Kulla Gowder		1974	3224-1/2		
6. Smt. D. Alice	David		1974	3136	SC	
7. M. Balakrishnan Nair.	M. Sankaran Nair		1977	3000		
8. R. Rajamani	Rama Gowder		1974	2943-1/2	—	
9. Sri D. Sowrymuthu	Devasahayam		1977	2288		
10. Smt. Anthoniammal	W/o A. Das.		1977	2859		
11. Sri N. Bheeman	Manja Gowder		1974	2814-1/2	—	
12. Sri P. Chinniah	Perumal		1977	2755-1/2	SC	
13. Sri G. Kannian	Gnanavasagam		1977	2668	SC	
14. S. Sankaran	Seluviah		1977	2629-1/2	SC	
15. Sri K. Balaraman	Kakkamallan		1974	2546		
16. Sri C. Nanjan	Chokka Gowder		1974	2470-1/2		
17. Smt. P. Lakshmi	Perumal		1979	2440	SC	
18. Sri A. Soundararajan	Ambrose		1978	2432-1/2		
19. R. Lingiah	Ramiah		1977	2431-1/2	SC	
20. Smt. D. Sivalakshmi	W/o K. Neelan		1977	2326-1/2	SC	
21. Sri L. Rajappa	Linga Gowder		1974	2205-1/2		
22. Sri C. Gunalan	Chokka Gowder		1974	2202		
23. Sri A. Devaraj	C. Antony		1978	2181-1/2		
24. Sri N. Rajappan	Nandhi Gowder		1974	2110		
25. T. Govindan	Thimmanna		1980	2098-1/2	SC	
26. Sri J. Thangaraj	Joghee Gowder		1978	2034-1/2		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
27.	Sri S. Sunderraj	Sivaiah	1980	1913	—	
28.	M. Veluswamy	Maruthachalam	1981	1830		
29.	Sri R. Chandran	Rangappan	1980	1823	SC	
30.	Sri A. Marimuthu	Arumugam	1980	1808-1/2	SC	
31.	Smt. Neelavathi	Doddhathamma	1980	1791-1/2	SC	
32.	Sri A. Periannan	Arumugam	1980	1722		
33.	S. George Vincent	Savarimuthu	1981	1495		
34.	Sri K. Sheeman	Kakkamallan Gowder	1980	1154	SC	
35.	Smt. P. Sarasu	Perumal	1983	1355	SC	
36.	Smt. Rajamani	Jothimuthu	1983	1311-1/2	SC	
37.	Sri S. Natesan	Selvaraj	1984	947-1/2	SC	
38.	Smt. T. Runi	Thimmaiah	1984	936	SC	
39.	Smt. Vanaja	Chinnaswamy	1984	899-1/2	SC	
40.	Sri B. Lakshmanan	Nanjundaiah	1984	867		
41.	Sri K. Radhakrishnan	Kuttan	1984	627-1/2	—	discontinued.
42.	Sri N. Gunasekharan	Nayagam	1978/	613-1/2		discontinued
			1985			during 1981
43.	Smt. Parvathi	Marimuthu	1986	525	SC	
44.	Sri K. Manira	Krishna Gowder	1984	549-1/2		
45.	M. Viswanathan	Marian	1985	512	SC	
46.	Sri C. Kuppuswamy	Chinnaswamy	1986	486	SC	
47.	Sri N. Kumar	Narayanaswamy	1986	474		
48.	Smt. Vasantha	W/o Ekambaram	1986	464	—	
49.	Sri S. Sekar	Selviah	1987	398	SC	
50.	Sri R. Srinivasan	Rangappan	1987	398	SC	
51.	Sri K. Srinivasan	Krishnan	1987	313-1/2	SC	
52.	Sri M. Ravi	Mayannan	1987	287	SC	
53.	Kumari Sonia	Gabriel	1987	128	—	
54.	Sri R. Vijayakumar	Rangan	1987	123	SC	

(2) Parties were served with summons.

(3) The Petitioner-Union filed its claim statement praying to regularise the employees in the list appended to the notification of the Government with the appropriate scale of pay and amenities applicable to them from the date of their joining.

(4) In spite of several adjournments, the Respondent-Management did not file counter statement. No representation was made on its behalf. Hence the management was set *ex parte*.

(5) Today, on behalf of the workmen, Thiru M. Manickam, the President of the Petitioner-Union is examined as W.W.I. The seniority list of workers is marked as Ex. W-I though him Claim is proved

(6) Award is passed directing the Respondent to regularise the appointment of 54 workmen as mentioned in the reference. No costs.

Dated, this 13th day of July, 1992.

THIRU M GOPAL ASWAMY INDUSTRIAL TRIBUNAL

WITNESSES EXAMINED

For workmen

W/W.I.— Thiru M. Manickam

For Management

None.

For workmen

DOCUMENTS MARKED

For management

Ex. W-I—Seniority list of Workmen
Nil.

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2227—श्रीधर्मिक विदार अधिकारी, 1947 (1947 का 14) का ध.ना 17 के अनुसार मे, केन्द्रीय सरकार विविध संस्थानों मानेवर उनके लिए संबन्धित प्रबन्धक के नवद विवाजों और उनके कर्मकारों के लिए, प्रमुख ने अधिकारी विदार में केन्द्रीय संसाधनों अधिकारी भास्तु के पाट विवाहित करने हैं, जो केन्द्रीय सरकार द्वारा 27-7-92 को प्राप्त हुआ था।

[न. एम-41012/75/89-आर्य विवाह (ग. यू.)]

न. वि. वि. उषा, ई-क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Divisional Rly. Manager, Northern Rly. Lucknow and their workmen, which was received by the Central Government on 27-7-92.

[No. L-41012/75/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
DEOKI PALACE ROAD PANDU NAGAR KANPUR

Industrial Dispute No. 313 of 1989

In the matter of dispute between

General Secretary,

Purvottar Rly. Shramik Sangh,

6 Navin Market,

Kaisarbagh,

Lucknow.

AND

The Divisional Railway Manager,

N.E.R. Ashok Marg,

Lucknow

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/75/89-IR(DU) dt. 13-12-89, has referred the following dispute for adjudication to this Tribunal.—

Whether the action of Divisional Rly. Manager North Eastern Railway Lucknow was justified in terminating the services of Sri Om Prakash Srivastava w.e.f. 30-4-84 is justified? If not, what relief the workman is entitled to?

2. In this case 2-7-92 was fixed for filing of affidavit evidence in the case. On the said date Sri Tewari authorised representative for the Union submitted before the Tribunal that the workman did not turn up despite his writing to him. To me the above submission of Sri Tewari does not seem to be plausible explanation, and I am inclined to believe that the Union is not interested in prosecuting the case of the workman. On 25-9-91, 18-11-91 or fixed for filing of affidavit evidence.

3. Therefore, in view of the above a no claim award is given in the case.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2227—श्रीधर्मिक विदार अधिकारी, 1947 (1947 का 14) का श्रावा 17 के अनुसार मे, केन्द्रीय सरकार, मध्य रेल्वे भास्तु के प्रबन्धक के लिए उनके कर्मकारों के बीच, अनुबंध में अधिकारी विवाहित करने के लिए, प्रमुख ने अधिकारी विदार में केन्द्रीय संसाधनों अधिकारी भास्तु के पाट विवाहित करने हैं, जो केन्द्रीय सरकार द्वारा 27-7-92 को प्राप्त हुआ था।

[न. एम-41012/24/87-ए-II (बो.पाट)]

के.सी.बा.उषा, ई-क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employees in relation to the management of Central Railway, Jhansi and their workmen, which was received by the Central Government on 24-7-92.

[No. L-41012/24/87.DII(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL

NEW DELHI

I.D. No. 81/88

In the matter of dispute between:

Km. Meera Tandon,
through Shri S. Surender Singh,
Secretary, I.N.T.U.,

C. (3.5) 2/236 Namner, Agra.

Versus

Divisional Railway Manager,
Central Railway,
Jhansi.

APPEARANCES:

Shri Surender Singh—for the workman.
Shri A. N. Sharma—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/24/87-D-II(B) dated 5-8-88 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the Management of Divisional Railway Manager, Central Railway, Jhansi in terminating the services of Km. Meera Tandon Social Guide w.e.f. 1-5-1985 is justified? If not, to what relief the workman is entitled?”

2. Km. Meera Tandon, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 22-2-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Sushila from 28-9-82, Hailon from 14-10-82 and Rajesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason,

without payment of any compensation of notice. Other ladies who were appointed later were still working at Bhoal Railway Station though the workman was senior but her services have been terminated and the junior persons were still working there. It was a clear out violation of the provisions of the I.D. Act and the workman deserves to be reinstated with full back wages.

3. The Management in its written statement alleged that the applicant was not a workman within the meaning of I.D. Act and the present proceedings were not maintainable. A scheme was introduced to engage Girl Social Guide at Agra Cantt, Railway Station on an Honorarium of Rs. 1.50 per hour (maximum 8 Hrs. in a day) for a short period subject to the condition that she should be a graduate and that her father should be working in railways in Agra Area vide Orders dated 4-9-1982 issued by the Superintendent Agra Area Central Railway. Consequently, the applicant alongwith others were engaged as Social Guides after holding of a vive voce test and there was no regular employment. It was a purely local arrangement from amongst daughter of the railway employees working in Agra Area. No Girl guide by the name of Smt. Rekha was appointed and the dates of engagement of other Social Guides in the statement of claim were incorrect. She was not engaged through the Railway Service Commission and such employment does not confer any right upon the applicant for regular employment. The services of the applicant and the other Social Guides were dispensed with as the same had been continued with the sanction of the Competent Authority. There was no illegality in the termination nor any violation of the Industrial Disputes Act.

4. The Management examined Shri S. B. Singh Chief Reservation Inspector in support of its evidence while the workman appeared as WW1. I have heard representative for the parties and have gone through the record.

5. Representation for the management has alleged that as alleged by them in the written statement the workman was not appointed on regular basis and was appointed at Rs. 1.50 per hour with a maximum 8 hours duty for a short period. No appointment letter has been produced by the workman to show that she was appointed on any other terms except one stated by the management. Moreover, a notice was sent which clearly laid down that the applicant should be graduate, her father should be working in the Railway in Agra Area. It was on the basis of these terms that selection was made for the Girl Social Guides on honorarium basis. The representative for the workman has asserted that she was paid @ Rs. 12 per day was not correct because no such appointment letter has been shown by the workman representative and the only notice shown by the Management on the basis of which appointment was made was that she was paid at Rs. 1.50 per hour maximum working hours were to be 8 hours.

6. The representative for the workman on the other hand has urged that once she was appointed and the completed 240 days, she was covered under the provisions of the I.D. Act and her services could not be terminated without due notice and compensation. In this regard he has referred to AIR writ petition No. 3392/1988 Allahabad High Court Lucknow Bench between Bhakra Dist. Coop. Bank Ltd. Vs. Ramesh Chandra Khatra and others in which he has also referred to 1989 Supreme Court cases (L&S) 565 in what it was held on follows :

"Labour Law-Industrial Disputes Act, 1947-Section 25-F Termination of service in violation of Section 25-F, held void ab initio-Aggrieved employee, held entitled to continuity in service with back wages-Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation-Termination Back wages.""

7. On careful perusal of the points urged before me leads me to the conclusion that the applicants were appointed as Announcer/Social Guide at Agra on a honorarium of Rs. 1.50 per hour by the Superintendent Agra Area. It was a purely local arrangement vide Ex. M1 and M2. The fact

that she was appointed Enquiry Clerk/Announcer as stated in the statement of claim was not correct. She was not appointed as Enquiry Clerk. There was no question of appointing 4-5 Social Guides at one station for a short term. No documentary evidence has been produced in the form of appointment letter otherwise that she was appointed as Enquiry Clerk. It has been asserted by the workman that they were performing clerical duties but this fact has not been established. The functions of the Announcer/Social Guide was to inform the travelling public about the time of arrival and departure of trains. The announcement on public address system, though based on written script, requires a special talent in the announcer. All the workmen appointed under Ex. M1 and M2 were terminated and there was no question of any junior person having been retained. This has been established by the sworn affidavit of Shri S. D. Singh. The person working at Bhopal Area had nothing to do with the Agra Area because it was an independent office and their control was separate. The seniority of those workmen cannot be equated with the seniority of those working in Bhopal. It is not disputed that regular recruitment of the Railway department is done through the Railway Public Service Commission and not in the manner this workman was appointed. This workman was appointed under a particular scheme of honorarium and not on the regular basis. She could not claim the benefit of workman under the Industrial Disputes Act nor could she expect to be absorbed on regular basis by this short cut matter. The appointment through Railway Public Service Commission is made only by public notification of the vacancies which calls for applications, from the public in general who are eligible for such assignments. In this scheme was applicable only for the daughter of the serving railway employees and that too in particular area and was a localised scheme which has not got further sanction from the competent authority. The applicant in this case in my opinion was not entitled to any relief of the reinstatement and the termination was justified. Parties are left to bear their own costs.

7th July, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली 28 जुलाई, 1992

का ना ०१२०—श्रीवैदिकि निवाद अधिनियम, 1947 (1947 आ० १) को धारा १७ के अनुच्छेद में, केवल मरम्मान गाला वैदिकि मेत्रेज-मेट्रो ब्रेक्स के पवन्नारंब के सबूद नियोजकों श्री उलके वर्षकरों के बंन अनुबंध में निविष्ट श्रीवैदिकि विवाद में वेन्ट्रो द स-वार एस-टिक्स अधिकरण चार्ड गल के पदार्थ को कांशिं इस्तरा है, जो वेन्ट्रो द स-वार का २७-७-९२ को प्राप्त हुआ था।

[ग एल-42012/5/91-इ इतर (डो दू)]

के द्वारा द्वारा उम्मीद देना अधिकारी-

New Delhi, the 28th July, 1992

S.O. 2229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/5/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH
Case No. I. D. 119/91

Mahesh Vs. Bhakra Beas Management Board.
For the Workman : Shri R. K. Singh.
For the Management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/5/91-IRDU dated 20th September 1991 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

'Whether the action of the management of Bhakra Beas Management Board in terminating the services of Shri Mahesh s/o Shri Kirpal is justified? If not, to what relief is the workman concerned entitled?"

2. Present case was taken up today at Nangal on day to day hearing. Sh. Mahesh the petitioner has filed settlement Ex. C1 and endorsed it while making statement. In Ex. C1 he has stated that the dispute has been settled with the Management and case be allowed to withdrawn and this has been done with the free consent and proper understanding.

Mr. Harmesh Chand appearing on behalf of the Respdt. Management has also made similar statement and also stated that the petitioner will be taken on duty on daily wages without any back benefits. Whenever his turn will come his services will be regularised. He has also stated that upon taken on daily wages his services will not be terminated illegally.

In view of the statement made by the respective parties and the settlement Ex. C1 and condition stated by the rep. of the management, present reference is disposed off accordingly and returned to the Ministry.

ARVIND KUMAR, Presiding Officer

Chandigarh.

Camp at Nangal
22-5-1992.

दह दिन 28 जुलाई 1992

का. ना. २१०.—भौतिक विवाद विविधायम्, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार भाकरा बीमास मेनेजमेंट बॉर्ड नंगल टाउनशिप के प्रबन्ध नियोक्तों और उनके कर्मकारों के बीच, घनुसंघ में निर्दिष्ट भौतिक विवाद में केन्द्रीय सरकार भौतिक विवाद चालान के प्रकार का प्रकाशित वरता है, जो केन्द्रीय सरकार का 27-7-92 का प्राप्त हुआ था।

[No. L-42011/1/90-व्यापार (जे. पू.)]
क०व००३००५००, देस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Salal Hydro Electric Project Jyotipuram and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42011/4/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

LABOUR COURT, CHANDIGARH

Case No. I. D. 155/90

Workmen Vs. S.H.E.P

For the workmen : None

For the management : Shri V. K. Gupta.

AWARD

Central Govt. vide gazettee notification No. L-42011/4/90-IR(DU) dated 17th October 1990 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

'Whether the action of the management of Salal Hydroelectric Project, Jyotipuram in denying the promotion of the Foreman in pay scale of Rs. 550-900 to pay scale of Rs. 650-1200 against the terms of settlement dated 6-5-87 is justified? If not to then what relief the workmen are entitled to and from what date?

2. In the present case earlier rep. is not appearing on behalf of the petitioner. Various registered notices were issued to the workmen but none put up appearance. Present reference is dismissed in default and returned to the Ministry.

Chandigarh.

Camp Jammu

24-4-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का. ना. 2231.—भौतिक विवाद प्रतिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार भाकरा बीमास मेनेजमेंट बॉर्ड नंगल टाउनशिप के प्रबन्ध नियोक्तों और उनके कर्मकारों के बीच, घनुसंघ में निर्दिष्ट भौतिक विवाद में केन्द्रीय सरकार भौतिक विवाद चालान के प्रकार का प्रकाशित वरता है, जो केन्द्रीय सरकार का 27-7-92 का प्राप्त हुआ था।

[म. एन-42012/70/91-व्यापार (जे. पू.)]

के.बी.बी. उर्जो, देस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Township and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/70/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 186/90

Shiv Shankar Vs. Bhakra Beas Management Board.

For the workmen : Shri R. K. Singh.

For the management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/70/90-IRDU dated 29th November 1990 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

'Whether the action of the management of BBMB Bhakra Dam Nangal Township in denying employment to Shri Shiv Shankar son of Shri Ram

Dularey Skilled Labour in their Rose Garden Section of the Bhakra Dam Division w.e.f. 1-3-89 is legal and justified ? If not to what relief the concerned workman is entitled and from what date?"

2. Present case was taken up at Nangal on day to day hearing basis Mr. R. K. Singh A/R of the workman has made statement that workman is not traceable and therefore, he does not want to pursue with the present reference and same may be returned to the Ministry.

In view of the statement made by Shri R. K. Singh A/R of the workman, present reference is returned to the Ministry.

Chandigarh.

Camp Nangal

21-5-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का आ. 2332—प्रौद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भाकड़ा ज़िलाम सेनेज़मेंट के प्रबन्धसंबंध के संबंध नियोजकों और उनके कर्मचारों के बीच अनुभव में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक प्रधिकरण, बैंडगढ़ पचपट का प्रकाशित करती है, जो केन्द्रीय सरकार की 27-7-92 की प्राप्त हुआ था।

[सं. पंल-42012/67/88-डी-II (बो)]
केंद्रीय वर्ती उपायी, देस्क प्रधिकारी

New Delhi, the 28th July, 1992

S.O. 2232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Dam and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/67/88.D.II(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 91/89

Narinder Kumar Vs. Bhakra Beas Management Board.

For the workman Shri R. K. Singh

For the management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/67/88-D(B) dated 24th May 1989 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Es. Eng. BBMB Nangal Dam in terminating the services of Shri Narinder Kumar on daily wages w.e.f. 24-4-86 is legal and justified ? If not, to what relief the concerned workman entitled and from what date ?"

2. Present case was taken up at Nangal on day to day hearing basis. Mr. R. K. Singh authorised representative of the workman has made statement that they do not want to pursue with the present reference and same may kindly be returned to the Ministry.

2020 GI '92—10

In view of the statement made by the rep. of the workman Shri R. K. Singh the present reference is returned to the Ministry.

Chandigarh.

Camp Nangal

21-5-92

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 29 जुलाई, 1992

का आ. 2333—प्रौद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भाकड़ा ज़िला में बैंडगढ़ बैंड, नंगल डाउनिंग में प्रबन्धता के नवदूतियों को दौरा उनके कर्मकारों के बीच अनुभव में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक प्रधिकरण, बैंडगढ़ पचपट का प्रकाशित करती है, जो केन्द्रीय सरकार की 27-7-92 की प्राप्त हुआ था।

[सं. पंल-42012/20/91-प्राई शार (बोयू)]

के. बी. बी. उण्णी, देस्क प्रधिकारी

New Delhi, the 28th July, 1992

S.O. 2233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Township, and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/20/91.IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No I. D. 125/91

Govind Singh Vs. B.B.M.B.

For the workman : Shri R. K. Singh

For the management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/20/91-IR DU dated 26th of September 1991 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Bhakra Beas Management Board, Nangal Township, in terminating the services of Shri Govind Singh son of Shri Bir Singh, w.e.f. 1-7-87, is legal and justified? If not, to what relief the concerned workman is entitled and from what date?"

2. Present case was fixed at Nangal on day to day hearing basis. Mr. S. P. Shah appearing on behalf of the workman Govind Singh has made statement that matter has been amicably settled with the respdt management and no dispute award is passed.

In view of the statement made by Shri S. P. Shah a No dispute Award is returned to the Ministry.

Chandigarh

Camp at Nangal

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. प्रा. 4234.—श्रीचार्यिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसार में, केंद्रीय मंत्रालय द्विविधान रेलवे एवं जल सेन्ट्रल रेलवे द्वारा के प्रब्रह्मनव के नंबर लियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चित श्रीचार्यिक विवाद में कन्दाम सरकार श्रीचार्यिक अधिकरण, नई दिल्ली के पंचायट का प्रकाशित करता है, जो केंद्रीय सरकार का 31-7-92 का प्राप्त हुआ था।

[सं एक-41012/22/87-ड-4 (ए) प्राप्त प्राप्त (डा. पू.)]

के बं.बो. उमा, डेस्क निधिकार्य

New Delhi, the 3rd August, 1992

S.O. 2234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Railway Manager, Central Railway, Jhansi and their workmen, which was received by the Central Government on 31-7-92.

[No. L-41012/22/87-D-4(A)/IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 79/88

In the matter of dispute between :

Smt. Shashi Kiran Dubey, Through Shri. Surender Singh, INTUC (U.P.), 2/236, Namnair, Agra.

Versus

Divisional Railway Manager, Central Railway, Jhansi.
APPEARANCES :

Shri Surinder Singh—for the workman.

Shri A. N. Sharma—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/22/87-D 4(A) dated 22-7-88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Management of Divisional Railway Manager Central Railway, Jhansi in terminating the services of Smt. Shashi Kiran Dubey, Social Guide w.e.f. 1-5-85 is justified? If not to what relief the workman is entitled?"

2. Smt. Shashi Kiran Dubey, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 26-7-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Sushila from 28-9-82, Hailen from 14-10-82 and Rujesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason, without payment of any compensation or notice. Other ladies who were appointed later were still working at Bhopal Railway Station though the workman was senior but her services have been terminated and the junior persons were still working there. It was a clear cut violation of the provisions of the I. D. Act and the workman deserves to be reinstated with full back wages.

3. The Management in its written statement alleged that the applicant was not a workman within the meaning of the I. D. Act and the present proceedings were not maintainable. A scheme was introduced to engage Girl Social Guides at Agra Cantt. Railway Station on an Honorarium of Rs. 1.50 per hour (maximum 8 Hrs. in a day) for a short period subject to the condition that she should be a graduate and that her father should be working in Railways in Agra Area vide Orders dated 4-9-1982 issued by the Superintendent Agra Area Central Railway. Consequently, the applicant alongwith others were engaged as Social Guides after holding of a viva voce test and there was no regular employment. It was a purely local arrangement from amongst daughters of the railway employees working in Agra Area. No Girl guide by the name of Smt. Rekha was appointed and the dates of engagement of other Social Guides in the statement of claim were incorrect. She was not engaged through the Railway Service Commission and such employment does not confer any right upon the applicant for regular employment. The services of the applicant and the other Social Guide, were dispensed with as the same had been continued without sanction of the Competent Authority. There was no illegality in the termination nor any violation of the Industrial Disputes Act.

4. The management examined Shri S. B. Singh Chief Reservation Inspector in support of its evidence while the workman appeared as WW-1. I have heard representative for the parties and have gone through the record.

5. Representative for the management has alleged that as alleged by them in the written statement the workman was not appointed on regular basis and was appointed at Rs. 1.50 per hour with a maximum 8 hours duty for a short period. No appointment letter has been produced by the workman to show that she was appointed on any other terms except one stated by the management. Moreover, a notice was sent which clearly laid down that the applicant should be graduate, her father should be working in the Railway in Agra Area. It was on the basis of these terms that selection was made for the Girl Social Guides on honorarium basis. The representative for the workman has asserted that she was paid @ Rs. 12/- per day was not correct because no such appointment letter has been shown by the workman representative and the only notice shown by the Management on the basis of which appointment was made was that she was paid at Rs. 1.50 per hour maximum working hours were to be 8 hours.

6. The representative for the workman on the other hand has urged that once she was appointed and she completed 240 days, she was covered under the provisions of the I. D. Act and her services could not be terminated without due notice and compensation. In this regard he has referred to AIR writ petition No. 3392/1988 Allahabad High Court Lucknow Bench between Baharaich Dist. Coop Bank Ltd. Vs Ramesh Chandra Khanna and others in which he has also referred to 1989 Supreme Court Cases (L&S) 565 in which it was held as follows :

"Labour Law—Industrial Disputes Act, 1947—Section 25-F—Termination of service in violation of Section 25-F, held, void ab initio—Acquiesced employee, held, entitled to continuity in service with back wages—Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation—Termination—Back Wages."

7. On careful perusal of the points urged before me, leads me to the conclusion that the applicants were appointed as Announcer/Social Guide at Agra on a honorarium of Rs. 1.50 per hour by the Superintendent Agra Area. It was a purely local arrangement vide Ex. M1 and M2. The fact that she was appointed Enquiry Clerk/Announcer as stated in the statement of claim was not correct. She was not appointed as Enquiry Clerk. There was no question of appointing 4-5 Social Guides at one station for a short term. No documentary evidence has been produced in the form of appointment letter otherwise that she was appointed as Enquiry Clerk. It has been asserted by the workman that they were performing clerical duties but this fact has not been established. The function of the Announcer/Social Guide was to inform the travelling public about the time of arrival and departure

of trains. The announcement on public address system, though based on written script, requires a special talent in the announcer. All the workman appointed under Ex. M1 and M2 were terminated and there was no question of any Junior person having been retained. This has been established by the sworn affidavit of Shri S. D. Singh. The person working at Bhopal Area had nothing to do with the Agra Area because it was an independent office and their control was separate. The seniority of those workman cannot be equated with the seniority of those working in Bhopal. It is not disputed that regular recruitment of the railway department is done through the Railway Public Service Commission and not in the manner this workman was appointed. This workman was appointed under a particular scheme of honorarium and not in the regular basis. She could not claim the benefit of a workman under the Industrial Disputes Act nor could she expect to be absorbed on regular basis by this short cut matter. The appointment through Railway Public Service Commission is made only by public notification of the vacancies which calls for application from the public in general who are eligible for such appointments. This scheme was applicable only for the daughters of the serving railway employees and that too in particular area and was a localised scheme which has not got further sanction from the competent authority. The applicant in this case in my opinion was not entitled to any relief of the reinstatement and the termination was justified. Parties are left to bear their own costs.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 3 अगस्त, 1992

का. आ 2235.—श्रीधारि विधाय अधिनियम, 1947 (1947 का 14) को धारा 17 के प्रत्यक्षरण में, केन्द्रीय सरकार दिवीजनल रेलवे मैनेजर सेन्ट्रल रेलवे, शासी, के प्रबन्धतात्व के संबद्ध नियोजकों द्वारा उनके कर्मकारों के बीच, अनुबंध में फिर्दिष्ट श्रीधारि विधाय में केन्द्रीय सरकार श्रीधारि विधाय में नई दिल्ली के प्रबन्ध का प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-92 को प्राप्त हुआ था।

[स.प्र. 41012/21/87-री-2(बी) / (मार्ई मार (ओ. य.)]

के. बो. बो. उणा, इक्स प्रधिकारी

New Delhi, the 3rd August, 1992

S.O. 2235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Railway Manager, Central Railway, Jhansi and their workmen, which was received by the Central Government on 31-7-1992.

[No. L-41012/21/87-D-2(B)IR(DU)]

K.V.B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER: CENTRAL GOVT. LABOUR COURT: NEW DELHI

I.D. No. 19/89

In the matter of dispute between
Smt. Sushila Prasar, Social Guide,
through Shri Surinder Singh, Secretary,
I.N.T.U.C. (U.P.) Branch,
2/236, Namnair, Agra.

Versus

Divisional Railway Manager,

Central Railway, Jhansi,

APPEARANCES : Shri Surinder Singh for the workman.

Shri A. N. Sharma for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/21/87-D. 2(B) dated 18-1-89 has referred the following Industrial Dispute to this Tribunal for adjudication :

"Whether the action of the management of Divisional Railway Manager, Central Railway, Jhansi is terminating the services of Smt. Shushila Prasar, Social Guide w.e.f. 1-5-1985 is justified? If not to what relief the workman is entitled?"

2. Smt. Shushila Prasar, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 22-9-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Km. Neeru Tandon from 22-9-82, Haile from 14-10-82, Rajesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the Management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason, without payment of any compensation or notice. Other ladies who were appointed later were still working at Bhopal Railway Station though the workman was senior but her services have been terminated and the junior persons were still working there. It was a clear cut violation of the provisions of the I.D. Act and the workman deserves to be reinstated with full back wages.

3. The Management in its written statement alleged that the applicant was not a workman within the meaning of I.D. Act and the present proceedings were not maintainable. A scheme was introduced to engage Girl Social Guides at Agra Cantt. Railway Station on an Honourarium of Rs. 1.50 per hour (maximum 8 Hrs. in a day) for a short period subject to the condition that she should be a graduate and that her father should be working in Railways in Agra vide Orders dated 4-9-1982 issued by the Superintendent Agra Area Central Railway. Consequently, the applicant alongwith others were engaged as Social Guides after holding of a viva voce test and there was no regular employment. It was a purely local arrangement from amongst daughters of the railway employees working in Agra Area. No Girl guide by the name of Smt. Rekha was appointed and the dates of engagement of other Social Guides in the statement of claim were incorrect. She was not engaged through the Railway Service Commission and such employment does not confer any right upon the applicant for regular employment. The services of the applicant and the other social Guides were dispensed with as the name had been continued without

sanction of the Competent Authority. There was no illegality in the termination nor any violation of the Industrial Disputes Act.

4. The Management examined Shri S. B. Singh Chief Reservation Inspector in support of its evidence while the workman appeared as WW1. I have heard representative for the parties and have gone through the record.

5. Representative for the management has alleged that as alleged by them in the written statement the workman was not appointed on regular basis and was appointed at 1.50 per hour with a maximum 8 hours duty for a short period. No appointment letter has been produced by the workman to show that she was appointed on any other terms except one stated by the management. Moreover a notice was sent which clearly laid down that the applicant should be graduate, her father should be working in the Railway in Agra Area. It was on the basis of these terms that selection was made for the Girl Social Guides on honorarium basis. The representative for the workman has asserted that she was paid @ Rs. 12/- per day was not correct because no such appointment letter has been shown by the workman representative and the only notice shown by the Management on the basis of which appointment was made was that she was paid at Rs. 1.50 per hour maximum working hours were to be 8 hours.

6. The representative for the workman on the other hand has urged that once she was appointed and she completed 240 days, she was covered under the provisions of the I.D. Act and her services could not be terminated without due notice and compensation. In this regard he has referred to AIR writ petition No. 3392/1988 Allahabad High Court Lucknow Bench between Bahraich Dist. Coop Bank Ltd. Vs. Ramesh Chandra Khanna and others in which he has also referred to 1989 Supreme Court Cases (I&B) 565 in which it was held as follows :—

"Labour Law-Industrial Disputes Act, 1947—Section 25-F-Termination of service in violation of Section 25-F, held, void ab initio-Agrieved employee, held, entitled to continuity in service with back wages—Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation—Termination—Back Wages."

7. On careful perusal of the points urged before me, leads me to the conclusion that the applicants were appointed as Announcer/Social Guide at Agra on a honorarium of Rs. 1.50 per hour by the Superintendent Agra Area. It was a purely local arrangement vide Ex. M1 and M2. The fact that she was appointed Enquiry Clerk/Announcer as stated in the statement of claim was not correct. She was not appointed as Enquiry Clerk. There was no question of appointing 4-5 Social Guides at one station for a short term. No documentary evidence has been produced in the form of appointment letter otherwise that she was appointed as Enquiry Clerk. It has been asserted by the workman that they were performing clerical duties but this fact has not been established.

The function of the Announcer/Social Guide was to inform the travelling public short the time of arrival and departure of trains. The announcement on public address system, though based on written script, requires a special talent in the announcer. All the workman appointed under Ex. M1 and M2 were terminated and there was no question of any junior person having been retained. This has been established by the sworn affidavit of Shri S. D. Singh. The persons working at Bhopal Area had nothing to do with the Agra Area because it was an independent office and their control was separate. The seniority of those workmen cannot be equated with the seniority of those working in Bhopal. It is not disputed that regular recruitment of the railway department is done through the Railway Public Service Commission and not in the manner this workman was appointed. This workman was appointed under a particular scheme of honorarium and not on the regular basis. She could not claim the benefit of a workman under the Industrial Disputes Act nor could she expect to be absorbed on regular basis by this short cut matter. The appointment through Railway Public Service Commission is made only by public notification of the vacancies which calls for application from the public in general who are eligible for such assignments. This scheme was applicable only for the daughters of the serving railway employees and that too in particular area and was a localised scheme which has not got further sanction from the competent authority. The applicant in this case in my opinion was not entitled to any relief of the reinstatement and the termination was justified. Parties are left to bear their own costs.

July 7, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का आ 2236—भौद्योगिक विवाद प्रशिनियम, 1947 (1947 का 14) की आरा 17 के अनुसार में, केन्द्रीय सरकार बद्रपुर अमृत पाल स्टेशन, बद्रपुर, नई दिल्ली के ग्रान्थालय के मध्य नियोजितों और उनके कर्मान्तरों के बीच, अनुबंध में निर्दिष्ट भौद्योगिक विवाद में केन्द्रीय सरकार भौद्योगिक आधिकारण नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 31-7-92 को प्राप्त हुआ था।

[म. ए. 42011/6/84-टी-II(बी)/भार्ड भार्ड-अ. ३]

के. बी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

NOTIFICATION

S.O. 2236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 ('4 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Badarpur Thermal Power Station, Badarpur, New Delhi and their workmen, which was received by the Central Government on 31-7-92.

[No. L-42011/6/84-I-D-II(B)[IR(DU)]

K. V. B. UNNY, Desk Officer,

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, NEW DELHI

I.D. No. 11986

In the matter of dispute between :

Badarpur Power Engineers Association,
(Regd. under the Indian Trade Union Act,
1926),

Badarpur Thermal Power Station,
Badarpur, New Delhi-110044.

through its General Secretary,
Shri Om Prakash,
10, 835, Chhota Bazar, Kashmere Gate,
Delhi-6.

Versus

Management of Badarpur Thermal Power
Station, Badarpur, New Delhi-110044.

through its General Manager.

APPEARANCES :

Shri Om Parkash for the workmen.

Dr. Anand Parkash with Shri Rajinder Dhawan
for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42011(6)84-D.II(B) dated the October, 1985 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the demand of General Secretary Badarpur Power Engineers Association that the Sr. Operator/Jr. Controller, Assistant Controller, Controller, Accountants Grade I, II, III Senior Accountant, Jr. Chemists, Supervisors Grade I, II, III and Sr. Supervisor in Badarpur Thermal Power Station should be treated as workmen by the management and should be consequently paid over time in terms of provisions of Factories Act, 1948 by the Management of Badarpur Thermal Power Station under National Power Corporation Ltd. is justified? If so, to what other benefits these categories of workers are entitled and from when?"

"Whether the demand of the General Secretary Badarpur Power Engineers Association for merger of E.1 and E.2 grades with equal further chances for both by the management of Badarpur Thermal Power Station under N.T.P.C. Ltd., Badarpur is justified? If so, to what benefits the departmental promotees now in grade E1 are entitled to and from what date?"

2. In the statement of claim filed by the workmen in this case it was alleged that the Badarpur Thermal

Power Station was an Industry as defined in the Industrial Disputes Act, 1947 and also a Factory as defined in the Indian Factories Act, 1948. It was engaged in the generation of Power, and it was a continuous process with public utility service of great importance. The employees were required to work round the clock as well as in general shift. From the last several years i.e. 1-4-1978 management of Badarpur Thermal Power Station was transferred to N.T.P.C. Limited for the limited period of 10 years as a Managing Agent of Government of India. Since its inception the Management indulged in unfair labour practices for not providing the protections and benefits under the provisions of various industrial laws to other categories of employees i.e. Senior Operator, Jr. Controller, Assistant Controllers, Controllers Accountants Grade I, II and III, Senior Accountants, Supervisors Grade I, II and III, Senior Supervisors, Junior Chemists etc. All these categories of employees are workmen as defined under Section 2(s) of the I.D. Act. The management arbitrarily did not consider the aforesaid category as "workmen" nor accorded the benefits to these categories. This Act of the Management was illegal, unjust and violative of Section 2(s) of the I.D. Act. The Badarpur Thermal Power Station is a vital installation and the Management of the NTPC limited at this Station appears to be too apprehensive of all consequences of the Unionism in these cadres and making all out efforts to see that they remain to be classified as Supervisory/Managerial and thus unable to use usual union weapons against the Management. It was nothing but colourable exercise of power. These members do not perform any managerial functions nor were they in any manner associated with the managerial activities. They do not supervise the work of anyone nor do they manage the work done by others. They were themselves doing their job and quite often on direction from their superiors. The details of the duties of these different categories of employees are as follows :

"(A) CONTROLLERS : The controllers are posted on the Boiler Desk, Turbine Desk, Generator Desk and Milling Desk. These locations are operated by the controllers. He is in fact operator of Desk, who controls the machine, as he sits-on a chair in front of the Desk and Controls the parameters of the machine with his own hands and write down his observation hourly. There is no subordinate under him for example, the functions of Boiler Desk operator is as follows :

His main job is to maintain the boiler pressure and temperature at about 90 Kg/cm² and 540°C on full load. As and when it is more or less than he himself control and feed the more pulverised fuel in the boiler or reduces the fuel in boiler. Similarly there are other such location such as Turbine Desk, Generator Desk, Milling Desk and their functions are on a logus. It will be seen that from the operational point of view none of these categories of so called supervisor personnel, supervise

any body's work, rather they are themselves workers in as much as they are operating personally. They enjoy no freedom to move away from the Desk during shift nor they have any Managerial/Administrative/Financial powers vested in them.

There are other nomenclatures on the technical side such as Sr. Operator, Jr. Controller and Assistant Controllers also. They are actually working on the same locations where controllers are working. These juniors and Assistant are rotating in shift with controllers and Sr. Operators and discharging same functions. Junior Controllers and Assistant Controllers are also posted on less important locations such as turbine floor, feed-pumps, condensate pumps, boiler floor and they are operating the machine with their own hands and doing all sort of manual work required for running of the machines. It is also pertinent to note that these locations are also managed by operator Grade I, II and III, who are discharging same functions and they are termed as "workmen". The Management however, drawn a technical line in these categories by calling some as supervisor and others as worker only for the differences that those who possess diploma in engineering are declared supervisors and who do not possess diploma are labelled as workers. There are about 250 such workers some are called Supervisors while others are not.

(B) A similar position exists in the Account Department. The Sr. Accountant who is termed as a Supervisor prepares the salary bills, L.T.C. Bills, Advance Bills and Medical Bills etc. He also prepares balance sheet. In practice the work of the Sr. Accountant is supervised by the Accounts Officer. The Sr. Accountant does not supervise any body's work nor can be allocate work in Accountants of grade I, II and III. In practice the Accountants Grade I, II and III are also doing the same type of work as Sr. Accountant and all of them are allocated work by the Accounts Officer or somebody higher than Accounts Officer. The bills are also not passed by the Sr. Accountant but are only prepared and only at times bills prepared by another to point out mistakes, if any and such checked may be done by a man of the same status or a little superior designated as Senior Accountant. Speaking in brief the Senior Accountant as well as the accountants grade I, II and III are accounts clerk tagged with their respective table during office working hours without having any financial or administrative powers or even supervisory powers.

(C) JUNIOR CHEMISTS : He does chemical analysis of water and gases in the laboratory by application of his own hand. It is true that he is assisted by the laboratory analyst

but these analyst are deployed by the Sr. Chemist, who also decide their placement with any particular junior chemist. The junior chemist cannot decide their work place. The junior chemists are usually analysing feed water, boiler water, steam sample, Hydrogen sample, flue gas sample and pulverised coal etc. The movement of junior chemists are fully controlled by the shift charge engineer or Dy. Manager (Chemist) etc.

(D) There are some supervisors grade I, II and III in the personnel department and their main job is to assist Personnel Officer, Dy. Manager (Personnel) and Chief Personnel Manager. In practice these supervisors are maintaining files and do nothing and a little bit of routine drafting. They are working at the direction of their officers. There is no subordinate to them nor they can allocate work to any body. They are not exercising any Managerial or Administrative powers but simply tagged to their tables."

The pay scales for grade III was Rs. 750 basic, grade II Rs. 800 per month basic and Grade I Rs. 880 per month basic and senior supervisors Rs. 950 and the maximum DA of about Rs. 490 with Rs. 50 as C.C.A. maximum was added to this basic pay. They were all drawing less than Rs. 1600 PM in the beginning of the scale. Some of them do cross emoluments more than Rs. 1600 PM but salary alone was not of significance in determining the Managerial and Supervisory nature of work. The supervision implies supervision of some subordinate's work, control of Administration etc., placement of subordinate and the like. These categories of the staff were covered under the definition of workmen who were rotating in shifts and were required to do double duty compulsorily. Even Accountants were also detained beyond their normal duty hours of work compulsorily as and when required by the Management after the end of General Shift and were also required to work on holidays for emergency accounts work. They were entitled for overtime when detained compulsorily for double duty or beyond their normal duty hours at the rate twice the rate of their ordinary wages as per provisions of Indian Factories Act. They were denied overtime payment only on the ground that they were supervisory cadre and as such not entitled to overtime.

3 The second dispute for the merger of E1 and E2 Grade. E1 was mainly meant for departmental employees i.e. employees working as Controller, Accountant Gr. I Supervisor Gr. I were eligible for the grade of E1 after having completed three years in their grade. Employees so promoted were eligible for the further promotion in the grade E II after having completed three years in A1 grade. The employees promoted in the grade of E1 were mainly Diploma holders in Engineering or Technical side while on Accounts and Personnel sides they were graduate and not graduate in their respective discipline. The post in E1 were duly filled in through direct recruits among Degree Holders in Engineering and graduate

in other disciplines. The duties assigned to the employees of grade E1 and E2 were same and they were discharging the same functions and responsibilities. The department employees after considerable experience of about 10 years or more being promoted to the lower grade of E1 while freshers having no experience were inducted to the higher grade E2 grade. Even the qualification, are same in cases of finance and personnel candidates. This was a gross discrimination. The workmen have demanded that the post of E1 should be abolished and employee should be promoted to the grade E II from the date of their promotion due for E1 grade. The discriminating two scales should be merged into one and both the grade should carry equal further chances of promotions.

4. In reply to this statement of claim the management filed written statement in which some preliminary objections to the maintainability of the references were also taken up. It was alleged that the National Thermal Power Corporation (hereinafter referred to as NTPC) was a company incorporated under the companies Act with its registered as well as Head Office at New Delhi which were commonly known as its corporate office. It was a Government of India Enterprise.

5. National Thermal Power Corporation was engaged in the business of Generation and transmission of Thermal Power through construction, erection, operation and maintenance of super thermal power projects and associated transmission lines net-work spread over in a number of States and the Union Territory of Delhi. Every such project is treated as an establishment of NTPC.

6. The generation and transmission of energy, particularly Super Thermal Power Stations, is a capital intensive industry and the Corporation used highly sophisticated technology which involves the employment of skilled manpower. The concept of Super Thermal Power Station consisting 500 MW units for power generation and high voltage transmission of 400 KV and high voltage direct current transmissions are introduced in a big way on the national power scene by NTPC. NTPC is administered on scientific lines laying down the structure of the organisation, relationship between sub-systems and nexus between technology and quality and quantity of manpower, channels of authority and communications and functional and status based stratification of jobs. Badarpur Thermal Power Station was set up on 4-5-74 by Department of Power, Ministry of Energy, Government of India.

7. By an agreement dated 12-4-78 between NTPC and Government of India, the Management of Badarpur Thermal Power Station was given to NTPC for a period of 10 years w.e.f. 1-4-78. All the persons who were on deputation and/or on the muster rolls of Badarpur Thermal Power Station were transferred to NTPC. Later on some of the deputationists reverted back to their parent department while some were absorbed in NTPC. All the staff working at Badarpur Thermal Power Station are employees of the NTPC now. In fact the Badarpur Thermal Power Station is being run managed and administered by NTPC even though the said Thermal Power Station belongs to the Government of India. This Power Station is treated as one of the Tribunals/Establishment of NTPC.

8. The Badarpur Thermal Power Engineers Association is one of the Trade Unions which is functioning at Badarpur Thermal Power Station. The said Association submitted its charter of demands vide its letter dated 30-7-83 and also by the said letter served a notice on the management of pen down strike to be followed by the General strike. The Badarpur Thermal Power Station has a public utility service, the conciliation officer, as required by law, initiated conciliation proceedings. After various hearings the memorandum of understanding was reached between the parties and the association accepted the representation of pay scales and allowances for the supervisory categories i.e. Sr. Operator, Jr. Controller, Supervisors Assistant Controller, Controller, Supervisors Gr. I, II and III, Sr. Supervisors, Accountant Gr. I, II and III Senior Account, Junior Chemist etc. in accordance with the corporate personnel circular No. 117/83 dated 19/26 September, 1983 excluding clause 72 of the said circular thereby giving substantial benefits to the said category of employees.

9. The said memorandum further recorded that the Association had proposed to the management that the supervisory employees who were detained for work beyond their normal duty hours should be given extra wages/salary on the basis of single rate in lieu of compensatory off. The memorandum recorded the said demand as under :

"Overtime working : The Association proposed that the supervisory employees who were detained for working beyond their normal duty hours should be given extra wages/salary on the basis of single rate in lieu of the compensatory this suggestion and give its decision within a period of 3 months."

In pursuance of the said memorandum of understanding the Management issued its circular No BTPSO 4-85 dated 12-7-85 which dealt with the demand for payment beyond normal hours of work to the supervisory cadre. In view of the understanding thus arrived between the parties and in pursuance of which understanding the management already had issued the circular and agreed to make payment of overtime stood settled between the parties. The dispute, therefore, if any ceased to exist.

10. The Association without any reason or cause vide letter dated 16-6-84 again served a strike notice and raised demand including for overtime as well as abolition of E1 Grade of the Executive category. The Conciliation proceedings ended in failure.

11. Badarpur Karamchari Sanyukt Morcha is a Conglomeration of 5 unions including the Association functioning at Badarpur Thermal Power Station. It submitted a charter of demands dated 12-10-84 including the demand for payment of overtime. The conciliation proceedings ended in failure in this case also.

12. All India NTPC Supervisory Staff Federation of which the Association a Constituent member in the meantime filed two writ petitions No. 1101/84 and 1102/84 in the High Court of Delhi. In

the said Writ petition the different in qualifications prescribed for Grade E1 & E2 was challenged. The writ petitions in fact pertained to the demand of the Association for abolition of EI Grade and merger of E1 and E2 grades. The writ petitions were dismissed by the Hon'ble High Court vide Order dated 18-10-84. Special leave petition was filed in the Hon'ble Supreme Court which was also dismissed on 4-12-85. Keeping in view the above salient features the management took some preliminary objections that this Tribunal had no jurisdiction to entertain this case as the Appropriate Government in this case was State Government and not Central Government which had made this reference. The reference order was bad and liable to be rejected and quashed. In view of the memorandum of understanding and the management circular referred earlier the dispute regarding the overtime stood settled between the parties and since no dispute existed so this reference was bad and liable to be quashed. The dispute between the parties never arose to the effect that these persons were supervisory employees and since no such dispute ever arose so terms of reference was bad in law and liable to be rejected. If the Supervisory staff were workers within meaning of a Worker as defined in the Factory Act, they were entitled to the benefits of the provisions in the Factories Act and no reference under section 10(i)(e) of the Act should be made. Factories Act was complete code and, therefore no other court or Tribunal had got jurisdiction to adjudicate upon and to enforce the provisions of the Factories Act. The merger of EI and EII grade again form the terms and conditions of the employment of workman and thus this dispute does not fall within the definition of Industrial Dispute Act as defined in Section 2K of the Act. This question has also been decided by the Hon'ble High Court in two Writ petitions filed by the Association and the Association was thus debarred from raising the same. There has been no espousal much less proper espousal in respect of the demands referred and foregoing subject matter of the reference order. The categories mentioned in terms of reference I are the Supervisory Categories drawing wages exceeding Rs 1600/- PM and the Tribunal has thus no jurisdiction to entertain reference in respect of those categories. The Association had agreed and accepted the above categories as supervisory categories and thus having accepted it was not open to the Association to contend to the contrary. The Government having once declined to make reference with demand could not have made such reference again.

13. On merits, it was alleged that the allegations made in the statement of claim were incorrect and the Association should be put to strict proof. Allegations were vague and lack material particulars. The categories of staff were not workmen as defined in Section 2(s) of the I.D. Act and were not entitled to the payment of any overtime. The generation of Power and distribution thereof is a public utility service as per Industrial Disputes Act, 1947 which is a continuous process and work is to be carried on round the clock. The working of the

employees has been divided into three shifts i.e. A B and C with the following timings :

- 'A' Shift—from 9 PM to 8 AM.
- 'B' Shift—from 8 AM to 3 PM
- 'C' Shift—from 3 PM to 9 AM.

Besides these there is a general shift from 8.30 AM to 5 PM while the employees working in the General shift get their weekly off on one day for every 6 days of work others in the rotational shifts get off for every 3 days of work. The concept of work week consisting of 6 working days as envisaged, in the Factories Act does not hold good for employees deployed/rostered in rotational shifts. The Management has not indulged in any unfair labour practice and is of providing protection and benefits under the provisions of various industrial laws. The allegations made in the statement of claim were incorrect. This category of staff was supervisory category and could not be considered as workers.

14. The two categories i.e., EI and EII Grade could not be merged together because different qualifications and requirement of work were expected from those recruited directly and recruitment was made on the basis of qualifications only. E. II grade was higher than EI grade and, therefore, by asking for abolition of EI Grade or its merger with EII grade, the Association was asking for promotion which was the function of the Management. The fixation of the work force both qualitative and quantitative was a Management function and not the jurisdiction of this Tribunal. On the basis of the above averments in the written statement it was alleged that the claim of the workman was not justified and the same deserves to be rejected. The Management examined MW1 Shri M. Jha, Superintendent. MW2 Shri Brij Kishore, Superintendent. MW3 Sh. J. P. Bhasker, Manager. MW4 Shri Mr. M. Harbhajan Singh Bhattal, Manager. MW 5 Shri H. S. Misra, Sr. Manager, MW6 Shri Brama Shanker Superintendent Operations and workmen examined WW1 Shri Om Prakash Gupta workman. WW2 Shri Jai Khushrani, Senior Supervisor, Personnel, WW3 Shri N. K. Chaudhary, workman. I have heard representative for parties and have gone through the record.

15. It has been urged by the representative for the Management that the reference has not been made by Appropriate Government. N.T.P.C. is a Company incorporated under the Companies Act and is a private limited company as defined under section 3(1) (III) of the Companies Act, 1956 as per para i(I) of the rejoinder. N.T.P.C. as such is not a Government Department. The employees working in Badarpur Thermal Power Station are employees of the NTPC. In order to decide as to who is the Appropriate Government one had to take into consideration the definition of the Industrial Disputes Act as stated in para 2(k) of the said Act as well as the definition of the Employer as given in section 2(g) of the Act. Para 2(k) of the I.D. Act defines an industrial dispute as "any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen.....". The present dispute is not a dispute between Employer and Employers

and there is no dispute between N.T.P.C. and Central Government. This is neither a dispute between the workmen and workmen and the Union can only rely and say that this is a dispute between employer and workmen. The workmen employed in B.T.P.S. are employees of the NTPC and not of the Central Government. It is thus a dispute between NTPC and its workmen.

16. The Appropriate Government has been defined under Section 2(a) of the Industrial Disputes Act. The Union can only rely and contend that BTPS is 'Industry' carried on by or under the Authority of the Central Government. The contention of the Union is that BTPS is owned by the Central Government. Merely because the ownership of the BTPS belongs to or vests in Central Government. It does not mean that any dispute arising between NTPC and its workmen cannot be said to be employees of the Central Government or that the Central Government would become appropriate Government in their case. Central Government should be Appropriate Government only if it was carrying on an Industry either itself or under its authority the present reference has been made by the Central Government which is as such not the appropriate Government in this case. This Tribunal has thus, no jurisdiction to go beyond the order of reference as the Tribunal derives its jurisdiction from the reference order and it has power to decide the dispute only as referred in the order of reference.

17. The next point referred to by the Representative for the management is that NTPC is an independent juristic person and is not a government department. Even if it is a Government Company it does not cease to be a company under the Companies Act and the ownership of the Management of the BTPS is irrelevant under Section 25FF of the Industrial Disputes Act, 1947, even the Management of an undertaking can be transferred. There is a distinction between ownership of an undertaking and the management of an undertaking. In the case of Heavy Engineering Union Versus State of Bihar 1968 I LLJ Page 241 the Supreme Court has dealt with the issue of what is the appropriate government and stated that inspite of the fact that the company may be a government company the power of reference is vested in the State Government and not the Central Government.

18. Even if the workmen contend themselves to be employees of the Government of India they cannot raise an Industrial Dispute with the employers in relation to the Management of General Manager BTPS namely NTPC. The charter of demand was submitted by them to the NTPC so was the memo of understanding reached with NTPC which clearly shows that the Association and its members had admitted that they were employees of the NTPC. This Tribunal has no jurisdiction to try this reference because the Central Government is not the Appropriate Government for making this reference.

19. This Tribunal has been constituted by the Government of India has not been appointed by the Delhi Administration and the reference under Section 10(1)(d) has to be by the Appropriate Government and the Appropriate Government in this case

was Delhi Administration/Lt. Governor of Delhi. In that case the reference should be made to the State Tribunal and not to the Central Government Tribunal.

20. The next preliminary objection by the management was that the memorandum of understanding was reached which was Ex. W5/14 No. BTPS-04-85 dated 12-7-1985 which covered the issue of payment of overtime. The dispute regarding overtime thus stood settled. Since no dispute existed so no reference could be made. In that M.O.U. which pertained to several demands including revision of Pay scales and other allowances, overtime, transfer and fixation of quota for promotion for workmen and employees in supervisory categories, issuance of terricot uniforms, safety shoes, overtime allowance etc. The said demands of the Union were satisfied and with regard to overtime the parties had agreed to as follows :

"Overtime allowance—

The association proposed that supervisory employees who are detailed for working beyond their normal duty hours should be given extra wage/salary on the basis of single rate in lieu of compensatory off. The management agrees to consider this suggestion and give its decision within a period of 3 months."

21. The Management gave its decision and issued circular F. MW5/8 whereby they agreed to pay overtime at single rate. Prior to signing of this MOU, the supervisory personnel who used to work in rotational duties and worked beyond their duty hours used to get a day in lieu of such work. Besides that, they used to get free dinner/break fast. They were also being paid an allowance equivalent to 10 per cent of their pay subject to a maximum of Rs. 50 p.m. as mentioned in at page 28 of written statement and not controverted by the union. In the interest of industrial peace and harmony, the said MOU was arrived at between the parties though it was not registered as a settlement under the I.D. Act.

22. According to Factories Act the payment is required to be made at double the rate. Though according to MOU Union demands was regarding payment of overtime at single rate. A reference on this ground again was bad.

23. It has been alleged by the representative for the management that the said term of reference has been worded, as if the categories mentioned therein are deemed to be the workmen under the Industrial Disputes Act, and would automatically be entitled to overtime under the Factories Act. The said assumption on which the said term of reference has been framed, is absolutely wrong. Payment of overtime under the Factories Act is governed by the provisions of the Factories Act and the rules framed thereunder. The Factories Act covered workers and not the workmen. Section 2(L) of the Factories Act defines 'worker' as under :—

"Worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for

remuneration or not) in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of the armed forces of the Union.)”

24. A perusal of this definition would show that the employee/worker is required to be working in any manufacturing process or in cleaning any part of the machinery or premises or in any other kind of work incidental to, or connected with the manufacturing process. An employee is thus required to be working in a place of manufacture.

25. The Union has failed to prove that the categories of employees mentioned in the term of reference No. 1 are all employed in the manufacturing process in the factory premises. In the absence of any such evidence, it is submitted that they have thus failed to prove that these employees would be the workers within the meaning of the Factories Act and/or would be entitled to overtime as per the provisions of the Factories Act.

26. I have heard the representative for the parties and have gone through the record of this case in details. The objection of the management regarding the maintainability of the reference and the competence of this Tribunal to adjudicate upon this dispute has no legs to stand upon. Central Government has made this reference to this Court and the said Government is the Appropriate Government. The Badarpur Thermal Power Station has been established by and under the Authority of the Central Government in the year 1973 and the managing control of Badarpur Thermal Power Station transferred to National Thermal Power Corporation for a period of 10 years on the basis of bilateral agreement effective from 1-4-1978 which has been extended for a further period of three years. National Thermal Power Corporation is the Agent of Central Government and it cannot be said in the present case that Central Government is not Appropriate Government in the case. The Government is exercising its authority on the affairs of the Badarpur Thermal Power Station as is evident from the Office Memorandum dt. 11-12-1984 Ex. WW1/31 and dated 17-12-1984 Ex. WW1/32. The Badarpur Thermal Power Station still functioning as an Establishment by and under the Authority of the Central Government. The National Thermal Power Corporation has got only qualified power to manage the Administrative control over B.T.P.S. and for the same the Managing Fees has been fixed by the Central Government to a maximum of Rs. 5 lacs per annum. The balance sheet of Badarpur Thermal Power Station is separately prepared to that of the N.T.P.C. for its own. The balance sheet of N.T.P.C. does not contain the affairs of Badarpur Thermal Power Station though it contains the affairs of other projects which are continuing under the Direct Control of N.T.P.C. The Central Government, in my opinion, therefore, is the Appropriate Government for making this reference for adjudication to this court.

27. As regards the other dispute made in the reference pertaining to the first part as to whether the demand of the General Secretary Badarpur Power Engineers Association that the Sr. Operator, Junior Controller etc. should be treated as workmen by the Management and should be consequently paid overtime in terms of provisions of Factory Act, 1948 by the Management detailed arguments by both the representative for the parties have been addressed.

28. The representative for the management has urged that the category of employees stated in this reference were not workmen as defined in the Act. He has urged that a worker under the Factories Act has been separately defined than a workman in section 2(s) of the Industrial Disputes Act. He states that the Industrial Tribunal could not give its opinion regarding the definition of the worker under the Factories Act because if a person goes to apply for any leave under the Factories Act he will have to prove his case falling under the said Act and this court has been constituted under the Industrial Disputes Act and has to only deal with the definition of the workman has given in the Industrial Disputes Act. The generation of power and distribution thereof was public utility service as per I. D. Act which was a continuous process and work is to be carried on round the clock. There were separate shifts offices for the working and running of the plant and the concept of work week consisting of 6 working days as envisaged in the Factories Act does not hold good for employees deployed/rostered in rotational shifts. It was obligatory for the Union to prove each and every person holding that designation or working within the factory premises and/or involved in the manufacturing process or in cleaning of factory or any work which was incidental to or connected with the manufacturing process. Merely because some evidence has been led with regarding to the working of the Controllers they could not be termed as workmen. The persons entitled to overtime allowance are to be defined by the State Government under section 64 of the Factories Act as well as rules framed thereunder. Section 64 of the Factories Act empowers the State Government to define persons who hold position of supervision or management or employed in a confidential position in a factory. Such persons could not be entitled to any extra payment of overtime under the provisions of section 64. Delhi Administration has made certain rules and under rule 81-82 of Delhi Administration persons holding position of supervision or management not require to perform any manual labour could be treated as supervisor staff and not entitled to any overtime allowance. Persons holding confidential positions were also not entitled to any such overtime allowance. It has been urged that the workmen have failed to lead any evidence to show that they were doing any manual labour. According to Mr. O. P. Gupta Controllers look after and manage the function of the plant their control panels which cannot be said to be of manual nature.

29. The Head Accountants, Attendants, Head Cashiers and Cashiers as well as Office Superintendent or Head Clerks were held to be the persons holding confidential positions. These categories were covered under rule 81 or under rule 82. Therefore, they could not be held entitled to overtime as per section 64 of the Factories Act. They were as such not entitled

to any payment of double the rate as claimed by them.

30. The representative for the management has further urged that though not admitting and even for the sake of arguments if the workmen as defined in I. D. Act automatically become worker under the Factories Act then his entitlement of overtime is governed by provisions of the Factories Act and would not automatically be entitled to the allowance.

31. On careful perusal of the points urged by the representative for the parties, I am of the definite opinion that the members of the union on whose behalf this case has been espoused are all workmen as defined in section 2(s) of the I. D. Act. It has been established that they are all covered under the definition of section 2(s) and the mere fact that they are operating machine with control panel does not in any way change the nature of their duties. Operating the panels with control panels is also a manual work and as such cannot make the persons working as Supervisor.

32. The categories of employees referred in terms of reference and from the nature of their duties performed by them it was clear that they were performing the duties of a workman and they were workmen within the meaning of section 2(s) of the I. D. Act. It has been proved that the work performed by these employees are by way of taking recourse to mutual, operational technical as well as clerical duties therefore, the predominant nature of the duties performed by these workmen categorically brings those workmen within the definition of a workman. Shri O. P. Gupta WW1 appeared on behalf of the workmen and stated that all these employees were performing their duties by way of mutual operational technical as well as clerical duties. He also proved documents Ex. WW 1|1 to Ex. WW 1|36. Shri O. P. Gupta stated that the duties of the Senior Operator are to operate Milling Desk and Boiler Desk and further justified that the details of his duties given in the affidavit in paragraph 26 was entirely correct. He denied the suggestion of the Management that these Senior Operators were supervising the work of any other persons or anyone else was working under them. They were not exercising or controlling the power on other operators. In Ex. WW 1|15 the management admitted that the Controllers falling within the category of Operators and Operators were within the meaning of workman and there was no dispute regarding the status of Operator as workman.

33. In Ex. WW 1|17 even the Senior Controllers, Junior Controllers of categories Senior Operator have been included within the channel of promotions which are prescribed for the workmen category. In photograph Ex. WW 1|6 Shri Om Parkash has been shown performing his duties manually on Desk|Control Board. Shri Brahm Shankar admits that Junior Controller to Senior Controller are working on Control Board on which WW1 have been shown working in Ex. WW 1|6. The rest of Senior Operator and Jr. Controller one and the same post and belong to the same category. In documents MW 6|W1 and MW 6|W2 and MW 6|W3 issued by the Management Controller have been referred as Desk Operator by them. They

were opposed to fill log sheet in different log in prescribed samples copy of which was Ex. MW 6|W5. From the perusal of the log sheet it could be seen that Senior Operator|Jr. Controller, Controller Assistant Controller were required to operate machine within the prescribed limits given on the log sheets. They were also supposed to have hourly readings. Instructions have been issued to them to carry out operational work of machine and equipment. The Representative have further urged that the Management has referred these employees performing duties either manually, operationally and technically in documents Ex. WW 1|19 Management itself admitted that Accountants were not holding confidential positions and they are doing original work manually and are not holding any Supervisory position. It has been further admitted by the Management that the Accountants are eligible for overtime allowance in terms of section 59 of Factories Act. All these employees were thus performing their duties manually operationally technically as well as clerically. The Representative has referred to AIR 1985 Supreme Court 985 where the Hon'ble Supreme Court held that the nature of duties of the workman shall be the decisive factor. The primary and the basic duties constituted the criteria for determining whether a particular employee is a workman or not. Chemists were held to be workmen in AIR 1971 Supreme Court 922.

34. In AIR 1984 Supreme Court 914 the Security Inspector under whom several watchmen were deputed was 'workman' within the meaning of section 2(s) of the Industrial Disputes Act because of the duties performed by the Security Inspector. In the instant case the Management could not bring any conclusive piece of evidence even to suggest that these employees are at any point of time worked and/or associated in Supervisory capacity of duties and whether they were made entitled to take disciplinary action against any employee or control on any employee. Controllers and Operators do not have any financial as well as managerial powers to discharge like sanctioning of leave, the placement chart of Controllers, Asstt. Controllers, Sr. Operator|Jr. Controllers and Operators Grade-I, II and III exhibited as WW1|9, WW1|10, WW1|11 and WW1|12 show that the Controllers and Assistant Controllers etc. performing the same job as being performed by Operator Gr. I, II and III and it was also admitted by MW6 that Controllers were working side by side of operators on same locations. The Supervisory and Managerial Powers are exercised by the Executives and the present category of employees do not fall in that category. All these employees, therefore, were workmen but no evidence has been led by the management to prove that they are not workmen or belong to any supervisory category.

35. For the reasons stated in the statement of claim and the arguments addressed by the representative for the workman with which I agree, I am of the opinion that the Senior operator|Junior Controller, Assistant Controller Accountants and other persons stated in the first part of the reference should be treated as workmen by the management and as such were entitled to overtime according to provisions of the Factories Act, 1948. Of course they have to fulfil requirements of the said Act before they could become eligible for payment. They were also entitled to all other statutory

benefits under the Factories Act as other workmen were entitled to. I, therefore, while concluding this part of the reference hold that these persons were workmen and entitled to all statutory benefits from the date of reference.

Reference Part II

36. It has been urged by the management regarding the second part of the reference that it was fully justified in keeping two separate channels with chances of promotion for both categories of EI and EII grades, in the Badarpur Thermal Power Station. One category belongs to the Engineers who are promoted and the other on the basis of direct recruitment. There was no discrimination in keeping these two channels because the qualification for direct recruit were different and those for promotees were different. Detailed written arguments has been filled by the management on this.

37. The workman representative on the other hand have urged that EII grade was meant for departmental candidates and EII for direct recruits. The duties of both EI and EII grade are the same and they perform the same responsibilities. Candidates having experience of 10 years or more were being given lower grade of EI while the fresh recruits having no experience were being given EII Grade. When the nature of job of EI and EII are the same there was no justification in keeping the departmental employees below the direct recruits. It amounts to stagnation for the departmental candidates. It has further been urged that the reference of the writ petition by the management was not relevant because the said writ petitions were never intended to get a writ on the point of violation of grade I or its merger with EII.

38. The representative for the workman in their arguments have urged that their demand was fully justified. They have given detailed arguments in writing. The E-II category candidates were graduate engineers who were employed as trainees and after the period of training they were taken into E-II grade. Graduate Engineers were not available for EI category because of their higher qualification. The matter was agitated in the Hon'ble High Court vide writ petition No. 1101 of 1984 in which it was held by the Division Bench of the Hon'ble High Court that the criteria is uniformly applicable to all the employees of a Company. There is no discrimination. There is thus no merit in the writ petition and the same is accordingly dismissed. This order was passed on 18-10-84. Thereafter the Union went in for Special Leave Petition to the Hon'ble Supreme Court which too was dismissed on 4-12-85. Since the matter has already been decided by the Hon'ble High Court and for all those reasons given by the management in its written arguments I am of the view that since here is no discrimination established on record in maintaining two different categories of promotions there seems to be nothing wrong in this system being adopted by the management. The reference is answered accordingly. Parties shall bear their own costs.

GANPATI SHARMA, Presiding Officer
June 23, 1992.

नई दिल्ली, 4 अगस्त, 1992

का. ना. 2237.—ओर्डरोंगक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार द्वारा तानकों टिटालियम प्रोडक्ट्स लिमिटेड, थिवेन्टम के प्रत्यन्तव नियोजकों और उनके कर्मकारों के बीच, अनुदाप में निविट ओर्डरोंगक विवाद में ओर्डरोंगक भागिकरण, मदाम के पंचायत में प्रत्यार्पण करता है, जो केन्द्रीय सरकार की 31-7-92 की प्राप्ति हुआ था।

[नंबर न. ११-२९०११/४१/८६-डी-III (व)]

बा. एम. डेविड, डीक अर्कान्यो

New Delhi, the 4th August, 1992

S.O. 2237.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Madras as shown in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. Trivandrum and their workmen which was received by the Central Government on 31-7-1992.

[No. L-29011/41/86-D-III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Thursday, the 30th day of April, 1992

PRESENT:

THIRU M. GOPALASWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 24 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Travancore Titanium Products Ltd., Kochuveli, Trivandrum).

BETWEEN

The workmen represented by

1. The General Secretary, Titanium General Labourers Union, C/o T. T. P. Ltd., Trivandrum-695021.
2. The General Secretary, Titanium Workers' Union, C/o T. T. P. Ltd., Trivandrum-695021.
3. The General Secretary, Titanium Products Thozhilali Union, C/o T. T. P. Ltd., Trivandrum-695021.
4. The General Secretary, Titanium Employees' Association C/o T.T.P. Ltd. Trivandrum-695021.

AND

The Managing Director, Travancore Titanium Products Ltd., Regd. Office, Kochuveli, Trivandrum-695021.

REFERENCE :

Order No. L. 29011/41/86-D.III(B), dt. 1-3-1989,
Ministry of Labour, Government of India,
New Delhi.

This dispute coming on for final hearing on Wednesday, the 11th day of March, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl. V. Sukumaran Nair, B. Balakrishna Menon and B. Vijayalakshmi Menon, Advocates appearing for the workmen and of Tvl. B. S. Krishnan & Associates, Advocates appearing for the management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workmen and the management of Travancore Titanium Products Ltd., Kochuveli, Trivandrum arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L. 29011/41/86-D.III(B) dt 1-3-1989 of the Ministry of Labour, for adjudication of the following issues :

"Whether the demand of the Titanium General Labourers Union, Titanium Workers' Union, Titanium Employees' Association and Titanium Products, Thozhilali Union for rectification of anomalies in the salary of the following 18 employees; is justified? If so, what relief are the workmen concerned entitled to?"

Sl No.	Name of workers	Designation
1.	Gopinathan Achari V.	Carpenter
2.	Bangan Azari P.	"
3.	E. Ayyappan	"
4.	Pechambaran S.	"
5.	Kunhikannan D.	"
6.	James V. Velakulam	Electrician
7.	Karunakaran Nair K	"
8.	Krishnan Nair M	"
9.	Bebastian Joseph	"
10.	Ravindran Nair S.	"
11.	Engine L. Perera	"
12.	Abdul Sathat S.	"
13.	Stephenson H.	"
14.	Balan T.	"
15.	Paramashwaran Nair G.	"
16.	Surendranathan R.	"
17.	Girisankar K.	"
18.	Abdul Rahiman A.	"

2. The allegation in the claim statement are as follows : The Petitioners-3 Unions are sponsoring the case of 17 workmen who are technical hands such as Carpenters, Electricians, Fitters etc., for obtaining partly of pay with that of drivers all in the pay scale of Rs. 220—650. These technical hands are senior

to the drivers numbering four. Thiru A. P. Govindan was appointed on 13-4-1977 as a driver in the same pay scale but with a higher starting pay of Rs. 360 which was higher than the pay drawn by other senior drivers and also other senior technicians like the petitioners.

3. This act of unfair labour management by giving referential treatment to Thiru A. P. Govindan led all the other workmen to agitate for hiking their pay to that of Thiru A. P. Govindan. The Respondent-Management instead of increasing the pay of the other workmen in the same engineering department reduced the pay of Thiru A. P. Govindan to the minimum of Rs. 220 in the time scale. This reduction provoked Thiru A. P. Govindan to approach the Conciliation Officer and then the Industrial Tribunal, Quilon for restoring his original higher starting pay of Rs. 360. The Quilon Industrial Tribunal passed an award for raising A. P. Govindan's pay to Rs. 360 as originally fixed by the Respondent. Three drivers who were senior to Thiru A. P. Govindan; having already clamoured for raising their pay to that of the junior Thiru A. P. Govindan, had their dispute resolved in I.D. No. 77 of 1984 on the file of the Industrial Tribunal, Madras, under whose award, the senior drivers' pay was raised to be on par with the pay of Thiru A. P. Govindan with effect from A. P. Govindan's initial appointment dated 13-4-1977.

4. The technical workers seeking remedy in this I. D. made individual representations to the Respondent for increasing the pay of these 17 workers to the pay of their junior A. P. Govindan and also three other drivers. Their representation were rejected by the Respondent by orders dated 1-1-1986 and 13-5-86. Then the question was raised before the Central Labour Commissioner, Trivandrum whose conciliation proceedings failed. Then the Union Government refused to make a reference to the industrial Tribunal after perusing the failure report. Thereafter the Petitioners filed a writ petition before the High Court of Kerala which directed the Central Government to refer this dispute to the Industrial Tribunal. Seventeen workers and the four drivers including Thiru A. P. Govindan are working in the same engineering department having the same time scale of pay and also similar duties. They are governed by Subordinate Service Rules framed by the Respondent. Substantially there is no difference between the work done by the Seventeen technical workers and the four drivers. It is not fair for the respondent to deny giving parity of pay to the seventeen workers who are seniors with the pay of the four drivers including Thiru A. P. Govindan who are all juniors. This anomaly of seniors drawing lesser pay than juniors in the same engineering department has crept in as a result of the special treatment given to the driver Thiru A. P. Govindan and subsequent events. The stand of the Respondent that the seventeen technical worker belong to a different cadre an agaists drivers who belong to a different cadre is false and untenable. Hence it is prayed that an award may be passed for fixing the basic pay of these seventeen technical workers at Rs. 360/- on par with the pay of Thiru A. P. Govindan in the same scale of pay from 13-4-1977 and granting all consequential monetary benefits.

5. The Respondent-Management alleged in the counter as follows. The reference is not maintainable. The workmen whose claim is under adjudication have joined the service of the Respondent during 1974-75. The Respondent's organisation is divided into several departments, of which the engineering department is the one. The Subordinate Service Rules framed by the Respondent's provide for six different scales of pay and under each time scale of pay different categories of workmen are grouped. The seventeen workmen concerned in this dispute belong to different trades in the engineering department but belong to the same category. This category is one among 48 categories of workers spread over various departments, but having the same pay scale. Drivers' category is also placed on the same pay scale. The appointment of Thiru A. P. Govindan as driver on 13-4-1977 with a higher starting pay as Rs. 360 resulted in the filing of an industrial dispute in the Madras Tribunal by the other drivers. Due to equitable considerations, the Madras Tribunal passed an award dated 24-1-1985 for raising the pay of other drivers on par with that of Thiru A. P. Govindan who was the juniormost among drivers.

6. The seventeen workmen covered by this dispute drawing inspiration from the Madras Tribunal's award sent representations to the Respondent on 11-12-1985 claiming that they being seniors to the drivers, more particularly Thiru A. P. Govindan, their pay should be raised to the pay of the drivers. The claim of these seventeen workmen is not honest and not just. They belong to a trade or cadre which is different from that of drivers. The nature of duties and qualifications, the process of selection and promotion procedures and avenues for these seventeen workmen are different from those of the drivers. The procedure for rectification of pay anomaly given under the Subordinate Service Rules does not provide for maintaining parity between different trades or cadres. Since the seventeen technical workers are not placed equally with the drivers, they cannot be treated equally in fixing their pay. If the claim of these seventeen workmen is allowed, all the other workmen belonging to 48 categories and having the same time scale of pay will raise similar demands for parity of wages on the ground of seniority. The claim has no merit and is liable to be dismissed.

7. The Petitioners' contend in their rejoinder as follows: The pay anomaly had occasioned only due to the act of the Respondent by which the starting pay of Thiru A. P. Govindan was arbitrarily fixed on 13-4-1977. The contention that the seventeen workers making the claim for parity belong to one trade and that the drivers belong to another trade is without substance. These seventeen workmen and the drivers belong to the same engineering department have the same time-scale of pay and perform similar duties and hence they belong to the same cadre.

8. The point for determination is :

"Whether the demand of the Titanium General Labourers Union, Titanium Workers Union,

Titanium Employees Association and Titanium Products Thozhilali Union for rectification of anomalies in the salary of the 18 employees mentioned in the reference is justified? If so, what relief are the workmen concerned entitled to?"

9. For the workers, one of them Thiru Abdul Rahman who is a fitter working in the engineering department was examined as W.W. 1. The Respondent-Management examined its Manager (Personnel Administration) as M.W. 1. Exs. W-1 to W-24 and Exs. M-1 to M-8 were marked. It is common case that the seventeen workers interested in this dispute are technical workers having got I.T.I. Trade Certificates and they are working under the Respondent as Fitters, Electricians, etc. and that they are also seniors to the drivers including Thiru A. P. Govindan who came to be appointed only on 13-4-1977. It is admitted that the seventeen technical workers who are seniors as against A. P. Govindan and other drivers, besides several other categories of workmen belonging to different departments are placed on the same pay scale of Rs. 220—650 under Subordinate Service Rules coupled with the settlements made periodically. It is also not in controversy that out of the 48 categories of workers spread over various departments but having the common pay scale, seventeen claimants herein and the four drivers belong to engineering department while many other workers belong to different departments. Therefore the parity of pay claimed by these seventeen workmen is clearly linked to one and the same department of engineering. Thus department wise there is unity between the seventeen claimants who are admittedly seniors and the four drivers and in particular Thiru A. P. Govindan who is junior to the claimants. The cleavage or anomaly has arisen as a result of the Respondent's act of putting Thiru A. P. Govindan appointed on 13-4-1977 on a higher starting pay of Rs. 360 but in the same time scale of Rs. 220—650. Being in the same engineering department and being also seniors to the driver Thiru A. P. Govindan the seventeen claimants are seeking parity of pay on the ground that they belong to the same cadre in the engineering department with identical pay scale. In the Subordinate Service Rules Ex. W-24, effective from 1977, the word 'cadre' is not defined.

10. One Rajan Valath was working as a Tradesman (Machinist) and was senior to Sri Varghese working as Tradesman (Instrument) under the Respondent in the Engineering Department. Rajan Valath was promoted as a Chargehand on 23-2-1978 while Varghese, junior to Valath was promoted as Chargehand on 11-8-1978. The pay of Varghese on promotion was higher than that of Rajan Valath. To set right the anomaly Rajan Valath raised I. D. No 15 of 1987 in the Quilon Industrial Tribunal through his Union. The Respondent contended that Rajan Valath belonged to one trade and Varghese belonged to another trade and hence they cannot be treated equally in the matter of pay. The Quilon Industrial Tribunal repelled the contention and passed the award Ex. W-15 on 12-12-1985 holding that the pay of Rajan Valath should be the same as that of Junior Varghese. In that award, we find that the Respondent-Management has raised the pay of Poulose working in the

electrical section to that of his junior Thiru Jean working in the mechanical wing. This award Ex. W-15 is sufficient proof of the validity of the claim that the pay of a senior workman should not remain below that of junior workmen even though the two workmen belonged to two different trade or wings but coming under one department. The argument of the Respondent that promotion avenues for the drivers are different from the promotion channels available to other Tradesmen like the claimants, in my view has no relevance to the consideration of parity of pay among holder of posts within the same department and placed on the same pay scale. It is only rudimentary justice that senior workmen should not suffer inequity of drawing lesser pay than junior workmen when all of them belong to the same department of engineering and are having common pay scale. The fact that the four juniors including Thiru A. P. Govindan are drivers and hence their trade or job is different from the trades of the seventeen claimants cannot be pressed as a wedge to divide and as a valid ground because the duties performed by them are almost alike and same are referred in the common pay scale of Rs. 220—650. The case of the seventeen workmen that they must be treated as equals of drivers and hence a junior driver cannot draw more pay than that of senior tradesmen is quite just and acceptable on the basis of equitable principles. There is nothing in the Subordinate Service Rules to support the Respondent's contention that drivers by virtue of their duties must be treated differently from the other tradesmen for the purpose of pay fixation. I therefore find that the seventeen tradesmen who are seniors to the driver Thiru A.P. Govindan should be given the same pay drawn by Thiru A. P. Govindan from 13-4-1977 and they must be given all consequential benefits accruing to them as a result of their pay being fixed at Rs. 360 per mensem with effect from 13-4-1977. This point is answered accordingly.

11. In the result, an award is passed directing the Respondent to fix the pay of seventeen claimants workmen as Rs. 360 p.m. with effect from 13-4-1977 and give these claimants all consequential benefits accruing to them as a result of their pay being fixed at Rs. 360 with effect from 13-4-1977. There will be no order as to costs.

Dated, this 30th day of April, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

List of Witnesses & exhibition in I.D. 24/89

WITNESSES EXAMINED

For Workmen :

W.W. 1—Thiru A. Abdul Rahiman.

For Management :

M.W. 1—Thiru K. M. Saraschandran.

DOCUMENTS MARKED

For Workmen :

Ex. W-1—Statement showing name of 17 workers, their designation and service particulars (xerox copy).

W-2—Statement showing name of 3 workers, their designation and service particulars (xerox copy).

W-3|11-12-85—Letter from Thiru A. Abdul Rahiman to the Management requesting to rectify the anomaly on the pay scale (xerox copy).

W-4|1-1-86—Reply by Management to Ex. W-3 (xerox copy).

W-5|8-4-86—Letter from Thiru A. Abdul Rahiman to the Management regarding revision of pay scales (xerox copy).

W-6|13-5-86—Reply by management to Ex. W-5 (xerox copy).

W-7|23-12-81—Xerox copy of the order of the Labour Court, Quilon in claim Petition No. 22|80.

W-8|24-1-85—Xerox copy of the Award of the Industrial Tribunal Madra, in I.O. No. 77|84.

W-9|27-6-86—Joint Representation submitted by the Petitioner—Union to the Management (xerox copy).

W-10—Letter from the Petitioner—Union to the Assistant Labour Commissioner (C) Ministry of Labour & Employment, Govt. of India, Trivandrum regarding the anomaly in the pay of some workers (xerox copy).

W-11|26-11-86—Conciliation Failure Report and Minutes of Conciliation proceedings dated 4-11-86.

W-12|6-10-87—Order No. L. 29011|41|86-D, III|II(B) of the Ministry of Labour, Govt. of India, regarding rectification of anomalies existing in the salary of certain employees (xerox copy).

W-13|24-10-88—Xerox copy of judgment of Kerala High Court in O.P. No. 1500|88C.

W-14|1-3-89—Order of reference for adjudication to this Tribunal (xerox copy).

W-15|22-12-89—Award of Industrial Tribunal, Quilon in I. D. No. 15|87 (xerox copy).

W-16|14-6-72—Memorandum of settlement between parties (xerox copy).

W-17|13-11-78—Order of Personnel Manager of the Management regarding rectification of the basic pay of Thiru A. C. Poulose (xerox copy).

W-18|21-1-83—Order of Personnel Manager of the Management regarding rectification of the basic pay of Thiru S. Benson (xerox copy).

W-19|3-12-85—Representation submitted by Thiru Rajan Vallath to the management (xerox copy).

W-20|26-3-86—Appeal preferred by Thiru Rajan Valath to the management regarding rectification of anomaly in his basic pay (xerox copy).

W-21|16-6-86—Representation submitted by the Titanium Workers Union to the management regarding rectification of the anomaly in the basic pay of Thiru Rajan Valath (Xerox copy).

W-22|3-3-86—Reply by the Management to Ex. W-19 (xerox copy).

W-23|16-4-86—Reply by the Management to Ex. W-20 (xerox copy).

W-24—Subordinate Service Rules of the Management effective from June 1977.

For Management :

Ex. M-1|30-9-85—Memorandum of settlement between workmen & Management (xerox copy).

M-2|14-6-76—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-3|1-10-77—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-4|12-10-77—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-5|9-1-78—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-6—Subordinate Service Rules of the Management effective from 1-5-1985.

M-7—Schedule in Part III of Subordinate Service Rules of Travancore Titanium Products Ltd., 1967, (xerox copy).

M-8—Subordinate Service Rules of Travancore Titanium Products, 1977—pages 11 to 14 (xerox copy).

नंदि विल्सनी, 4 अगस्त, 1992

का. ना. 2238—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के प्रत्युत्तरण में, केन्द्रीय सरकार श्रीलिंगा मिनरल्ज हैथेलपर्मेट कलानी निभिटेड, याकिस जिला केयोनजार के प्रबन्धस्थल के संबंध नियोजकों और उनके कर्मकारों के बीच, भनुबंध में निरिष्ट श्रीधोगिक विवाद में श्रीधोगिक अधिकरण, भुक्नेष्वर (ओडिशा) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-92 को प्राप्त हुआ।

[पंक्ति एल—26011/15/89—प्रार्थी प्रार्थी (मिस.)]

श्री. एम० ट्रीट, ईस० अधिकारी

New Delhi, the 4th August, 1992

S.O. 2238.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar (Orissa) as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Orissa Minerals Development Co. Ltd., Barbil District Keonjhar and their workmen, which was received by the Central Government on 21-7-92.

[No. L-26011/15/89-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA.

BHUBANESWAR

PRESENT :

Sri R. K. Dash, LL.B.,
Presiding Officer,
Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 27 OF
1989(C)

Dated, Bhubaneswar, the 15th July, 1992

BETWEEN :

The Management of Orissa Minerals Development Co. Ltd., Barbil, District Keonjhar.

... First Party-management.
AND

Their workmen represented through Keonjhar Mining Workers Union, At P.O. Barbil, District Keonjhar.

... Second Party-workmen.

APPEARANCES :

Sri M. C. Naik, Dy. General Manager(P)—For the first party-management.

Sri I. M. Bohara, General Secretary of the Union.—For the second party-workmen.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their Order dated 29th November, 1989 have referred the following disputes for adjudication by this Tribunal :—

- Whether the demand of the Keonjhar Mining Workers Union, Barbil for regularisation of S|Sri Promod Patra, Lois Lakra, Jagabandhu Mahakud and Biswasnath Apat and for payment of equal wages alongwith other benefits at par with the corresponding

category of regular workmen of O.M.D.C. Ltd., is justified? If so, what relief are the workmen entitled to?

(2) Whether the demand of the Keonjhar Mining Workers Union, Barbil for payment of equal wages and other benefits to Sri Guru Charan Munda and 16 others (workers of manganese section) at par with corresponding category of iron section workers of OMDC Ltd. is justified? If so, what relief are the workmen entitled to?

2. This case was posted to 8-5-92 for recording settlement. On that day representatives of both the parties filed a memorandum of settlement and prayed to pass an award in terms of the settlement. They submitted that they have already settled the dispute out of Court in the interest of industrial peace and harmony. The terms of the settlement were read over and explained to the parties to which they admitted to be true and correct. The settlement being fair is recorded. Hence, I pass this Award in terms of the settlement which do form part of the Award.

Dictated and corrected by me.

R. K. Dash, Presiding Officer.

FORM H

(See Rule 58)

Form of the Memorandum of Settlement

Name of Parties :

M/s. Orissa Minerals Development Co. Ltd., Barbil.

Vs.

Keonjhar Mining Workers Union, Barbil.

Representing Employer. Mr. M. C. Naik, Dy. General Manager (P) O.M.D.C. Co.

Representing workman.—Mr. P. K. Mudali, Secretary K.M.W. Union.

(2) Mr Indramani Behro, General Secretary K. M. W. Union.

Short Recital of the Case :

The K.M.W. Union had raised an Industrial Dispute before the Asst. Labour Commissioner(C) Rourkela which ended in failure. Thereafter the said dispute No. 5(90)89-RKL-A dt. 22-6-89 has been referred for adjudication before the Presiding Officer, Orissa, Bhuaneshwar vide Order No. L-26011/15/89 IR (Misc.) dt. 29-11-89 regarding equalisation of wages.

Both the parties have disengaged at length on the reference of the Dispute and agreed as under :

The reference of the Dispute is as under.

Schedule

(i) Whether the demand of Keonjhar, Mining Workers Union, Barbil for regularisation of Sri Pramod Patra, Sri Lois Lakra, Sri Jagabandhu Mahakud and Sri Biswanath Apat and for payment of equal wages alongwith other benefits at par with the Corresponding Category of regular workmen of OMDC Ltd., is justified. If so, what relief are the workmen entitled to?

(ii) Whether the demand of the Keonjhar Mining Workers Union, Barbil for payment of equal wages and other benefits to Shri Gurucharan Munda and 16 others (Workers of Manganese Section) at par with corresponding Category of Iron Section workers of OMDC Ltd., is justified. If so, what relief are the workmen entitled to?

4. In so far as the 1st part of reference of the dispute is concerned, Shri Pramod Patra, Lois Lakra, Jagabandhu Mahakud and Biswanath Apat have been regularised as the permanent employee of the Company as per the date mentioned below :—

Name	Date of regularisation
(i) Pramod Patra	1-9-90
(ii) Lois Lakra	1-9-90
(iii) Jagabandhu Mahakud	1-6-90
(iv) Biswanath Apat	1-9-90

The 1st party management has already mentioned the above facts before the Tribunal on 5-11-90.

5. That both the parties have mutually discussed regarding other benefits to the aforesaid 4 workmen and agreed as under :

(i) Pramod Patra will be upgraded as Dak Peon in the Cat. III.

(ii) Lois Lakra will be up-graded as per his eligibility subject to condition Cat. III.

(iii) Jagabandhu Mahakud has already been up-graded as Tractor Driver in Cat. V.

(iv) Biswanath Apat will be upgraded as Store|Office boy|Canteen|Lab. Boy in Cat. III.

6. The Second party therefore do not press for the demand as per the reference.

7. In so far the second party of reference of the aforesaid dispute is concerned, both the parties have mutually discussed regarding Gurucharan Munda and 16 others (Workers of Manganese Section). The 1st party management has agreed to upgrade as mentioned against their names taking into account their suitability for the upgradation so that the dispute under reference is closed.

Name	Designation	Present Category	Revised Category with Basic Wages	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)
i. Gurucharan Munda	Mines Foreman	X	X	Issue is dropped.	
ii. Purna Chandra Mahanta	—do—	IX	IX Rs. 1200/-	To be upgraded	
iii. R. K. Pradhan	—do—	X	X	Agreed to revise in proper fitment.	
iv. R. K. Behera	—do—	IX	IX Rs. 1200/-	To be upgraded.	
v. Santosh Kumar Dutta.	Mining Mate	—	—	Already resigned.	
vi. D. L. Rout	Clerk	IX	IX Rs. 1200/-	To be upgraded	
vii. Tulshi Mahanta	Clerk	IX	IX Rs. 1200/-	To be upgraded.	
viii. Md. Ayub	Security guard	—	—	Already retired.	
ix. Durga Bahadur	—do—	—	—	Already retired	
x. Tarun Ghosh	Supervisor	—	—	Issue is dropped.	
xi. Gangedhar Gope	—do—	—	—	Already retired	
xii. Md. Suman	—do—	—	—	Issue is dropped.	
xiii. Makru Bodra	Blaster	—	—	Issue is dropped.	
xiv. Sadhu Oram	Asstt. Cinema Operator	—	—	Issue is dropped	
xv. Bodan Singh Kerai	Mining Mate	—	—	Already retired	
xvi. Smt. Geeta Gope	Karim	I	II Rs. 455/-	To be upgraded.	
xvii. Druba Charan Swain	Cook	II	III Rs. 650/-	To be upgraded.	

8. The first party management agreed for up-gradation of the concerned Workmen w.e.f. 1-1-1992. The upgrade will be made which are made by today.

9. The second party therefore do not press for the demand as per reference in second part of the dispute.

10. That there were two different kinds of wages in respect of departmental monthly paid staff and daily rated employees applicable to Iron section and Manganese Section (Iron Staff & Manganese Staff).

11. That in order to remove the disparity in wages applicable to Iron staff and Manganese Staff, and to have a common scale of pay for both Iron staff and Manganese staff, a Tripartite Settlement has been arrived at before the Regional Labour Commissioner (Central), Bhubaneswar on 4th July, 1991.

12. That the aforesaid Tripartite Settlement is operative from 15th March, 1991. Covering 537 departmental monthly paid and daily rated employees working in both Iron and Manganese Section at Thakurani, Bhadrashai and Belkundi; Mines of O.M.D. Co. Ltd. This does not apply to the piece rated workers.

13. That both the Iron staff and Manganese staff are now put to common scale of pay and they are entitled for same Dearness Allowance and Variable Dearness Allowance and other benefits.

14. That as per the Tripartite Settlement dated 4-7-1991, the disparity in wages have been removed. They are now put in 10 common scales of pay keeping in view the years of experience, total emoluments drawn, nature of job being performed and qualification.

15. That the Tripartite Settlement dated 4-7-91 covering to 537 departmental monthly and daily rated employees is just and proper.

16. Both the first party management and second party workmen, therefore pray that the Order may be passed as per the terms of Settlement dated 4-7-1991, viewed before your Hon'ble Tribunal on 31st August, 1991 with a copy to union.

17. It is prayed by the both 1st party management of OMDC Ltd., and the Second party workmen that the Hon'ble Industrial Tribunal will be pleased to pass the Award as per the Tripartite Settlement dated 4-7-1991 arrived at before the Regional Labour Commissioner (C), Bhubaneswar, Annexure 'A' enclosed.

The Award for the aforesaid dispute may be passed on the following terms.

18. It is agreed to narrow down the difference in wages for 537 departmental staff working in Iron and Manganese Section and bring them together to common scales of pay applicable for both Iron and Manganese Staff.

19. This revision of scale of pay will cover to the present 537 departmental monthly paid and daily rated employees as on 15-3-91 and not piece rated employees working in both Iron and Manganese section at Thakurani, Bhadrashai and Belkundi Mines.

20. It is agreed to revise the existing 13 scales of pay for Iron Section and 11 scales of pay in Manganese Section. There will be 10 common scales of pay (categories) as mentioned below :—

- (i) Rs. 405-10-505-12-625-15-1075.
- (ii) Rs. 455-10-505-15-730-18-1180.
- (iii) Rs. 650-15-725-18-1085-20-1285.
- (iv) Rs. 700-18-1060-20-1360.
- (v) Rs. 800-18-980-20-1380.
- (vi) Rs. 850-20-1050-25-1425.
- (vii) Rs. 900—25-1150-30-1600.
- (viii) Rs. 950-30-1250-40-1730.
- (ix) Rs. 1000-35-1245-45-1830.
- (x) Rs. 1200-45-1650-55-2200.

21. The existing employees, as on roll of the Company dated 15-3-91 will be fitted within the revised 10 categories w.e.f. 15-3-92 as per Annexure 'A', while making fitment the total wages as on 14-3-91 comprising of present basic, adhoc, fixed dearness Allowance, V.D.A./F.V.C., Special Allowance if any, special pay if any, Gram Rebate if any, and servant allowance if any are taken into account.

22. It is agreed that while making fitment in the revised 10 categories the monthly paid staff and daily rated employees working in Iron Section and getting Iron scale of pay will get a minimum guarantee of Rs. 105 (Rupees One hundred five only) as also the monthly paid staff and daily rated employees working in Manganese section getting Manganese scale of pay will get a minimum guarantee of Rs. 130 (Rupees One hundred thirty only) as fitment benefit.

Since the existing Employees are fitted in the revised 10 categories from 15-3-91, the next yearly increment will fall due on 1-1-1992.

23. It is agreed that the departmental monthly paid staff fitted in the revised 10 categories will get a fixed Dearness Allowance Rs. 100 per month and balance amount of the existing gross emoluments are being treated as a part of revised basic V.D.A.

24(i) It is agreed that a part from new basic and fixed dearness allowance of Rs. 100 p.m. the monthly paid staff will also get V.D.A. The calculation of V.D.A. will be based on Consumer Price Index figure published by Labour bureau of Shimla Govt. of India, 1960—100 series (For 1960 Series Index figure to be arrived at by multiplying the linking factor of 493 to the Index figure 1982—100 series, as per Govt. of India Notification No. XXIII/60/221 dated 31-1-89. The base Index figure is 753 in 1960 series or 152-73(153) in 1982 series).

(ii) The V.D.A. will be paid @Rs. 0.78 per every point per month or Rs. 0.03 per day on rise or fall over the base index of 753(1960=100).

V.D.A. will be payable for the quarter mentioned below for both Iron and Manganese departmental monthly paid and daily rated staff.

V.D.A. payable

December, January, February,
March, April, May,
2020 GI/92—13

June, July, August,
September, October, November.

Basing on the Index figure
for the preceding quarter.

July, August, September,
October, November, December,
January, February, March,
April, May, June.

25. The settlement is applicable to the departmental monthly paid and Daily rated employees who are on roll of the Company as on 15-3-91.

26. The settlement supersedes to any earlier settlement/agreement arrived at in so far as the scale of pay/grade, adhoc increase in pay Food Value Concession paid, any personal pay or Special Allowance, Servant Allowance, gram rebate are concerned.

27. It is agreed that this settlement will be for a period of 4 years w.e.f. 15-3-91. However, after expiry of 3rd year it can be terminated as per the provision of the I.D. Act, 1947.

28. It is agreed that the rate of V.D.A. will not however, be below the rate of Special allowance notified by Chief Labour Commissioner(Central) from time to time under the M.W. Act, 1948.

29. While implementing the settlement if any anomaly arises, the same will be settled between the parties mutually failing which the parties are at liberty to refer the same to RLC(C), Bhubaneswar.

30. This settlement is made without prejudice to the Minimum wages as notified from time to time by the Central Government and applicable to the employees covered under this settlement.

(Sd/-)

30-1-92

(I. M. Behera)

General Secretary

Keonjhar Mining
Workers Union.

(Sd/-)

30-1-92

(Secretary)

Keonjhar Mining Workers Union.

(Sd/-)

30-1-92

(M. C. Naik)

Dy. G. M. (P)

Ist party management.

O.M.D. Co. Ltd.

30-1-92

Witness

Sd/-

Asst. Manager(P)

O.M.D. Co. Ltd.

Witness :

Manoranjan Sahw

Clerk, O.M.D. Co. Ltd.,

Barbil.

नई दिल्ली, 3 अगस्त, 1992

का. आ. 2239—आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 मनुवरण में, केन्द्रीय सरकार वाले पांच दूसरे के प्रबन्धन के मुद्र नियोजितों और उनके कर्मकारों द्वारा, अनुबंध में निर्दिष्ट आधिकारिक विवाद में केन्द्रीय सरकार आधिकारिक अधिकारण, बंदरगाह के पक्षपत को प्रकाशित करने हैं, जो केन्द्रीय सरकार को 28/7/92 को प्राप्त हुआ था।

[मंज्ञा एल-31012/7/91-आई आर (मिस.)]

द्वा. एम. डेविड, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay II as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workmen, which was received by the Central Government on 28-7-1992.

[No. L-31012/7/91-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.
Reference No. CGIT-2/29 of 1992

PARTIES :

Employers in relation to the management of Bombay Port Trust

AND

Their workmen.

APPEARANCES :

For the employer—No appearance.
For the workman—No appearance.

INDUSTRY : Port and Docks STATE : Maharashtra
Bombay, the 10th July, 1992

AWARD

The Central Government by their Order No. L-31012/7/91-IR (M) dated 8-5-1992 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bombay Port Trust in compulsorily retiring Shri Vithal Nana Kamble, Watchman, Security Department, w.e.f. 9-3-1989, is justified? If not, to what relief is the workmen entitled?"

2. After the said reference was received by this Tribunal on 19-5-1992, on 21-5-1992 this Tribunal received an application dated 20-5-1992 (Ex. 2) from General Secretary of the B.P.T. Railwaymen's Union. This letter states that :

"In this respect, we have to bring to your kind notice that the meanwhile, the Surface Transport Ministry, the Government of India has considered the appeal of Shri V. N. Kamble and allowed him to resume his duty with compensation of 75% of his total pay including all allowances.

In view of above, we have now no dispute to be raised before the Industrial Tribunal, Bombay, and hence we withdraw it."

Therefore, as the dispute in question is already mutually settled as above, the present reference stands disposed of.

The parties to bear their own costs of this inference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. आ. 2240—आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के मनुवरण में, केन्द्रीय सरकार इंटरनेशनल एयरपोर्ट इंटररेट आर हेलियो, बंदरगाह के प्रबन्धन के मुद्र नियोजितों द्वारा, अनुबंध में निर्दिष्ट आधिकारिक विवाद में केन्द्रीय सरकार आधिकारिक अधिकारण, बंदरगाह के प्रबन्धन करते हैं, जो केन्द्रीय सरकार को 28-7-92 को प्राप्त हुआ था।

[मंज्ञा एल-11011/10/90-आई आर (मिस.)]

द्वा. एम. डेविड, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay II as shown in the Annexure in the industrial dispute between the employers in relation to the management of International Airport Authority of India, Bombay and their workmen, which was received by the Central Government on 28-7-1992.

[No. L-11011/10/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer
Reference No. CGIT-2/21 of 1991

PARTIES :

Employers in relation to the management of International Airport Authority of India, Bombay

AND

Their workmen.

APPEARANCES :

For the Employer—Mr. Shamrao S. Patil, Advocate.
For the Workman—No appearance.

INDUSTRY : Aviation STATE : Maharashtra
Bombay, the 9th July, 1992

AWARD

The Central Government by their Order No. L-11011/10/90-IR (Misc.) dated 8-4-1991 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of International Airports Authority of India, Bombay Airport, Bombay, in terminating the services of 25 workmen, as per the Annexure 'A' attached, is justified and legal? If not, to what relief the workmen concerned are entitled?"

2. After the said reference was received from this Tribunal in April, 1991, the advocate for the union appeared before this Tribunal on 20-8-1991. Thereafter, till today several adjournments were taken by the union to file its statement of claim, but did not file the Statement of Claim till today. Union had remained absent on the last two days, i.e. 8-6-1992, and 8-7-1992. The action of the management in question was challenged by the union. Therefore it was for the union to file the necessary statement of claim stating as to how that action is not just and proper. However, as noted above, no statement of claim has been filed by the union till today. The union did not also lead any evidence to show that the said action was unjust and illegal. The management had remained absent from time to time. It seems that the union is not interested in pursuing with the present reference. As such, for the said reasons the present reference stands disposed of.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. आ. 2241.—मीडियिक विवाद अधिनियम, 1947 (1947 का 14) का अन्तर्गत 17 के अनुच्छेद में, केन्द्रीय सरकार द्वारा योग्य तेल लियम, मद्रास के प्रबन्धतंत्र के सबूत निवेदकों और उनके कर्मकारों के बीच, अनुबंध में लिविंग शीर्षोंगिक विवाद में शीर्षोंगिक अधिकारण, तमिलनाडु के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-30012/18/86-डी-III (बी)]

श्रो. एम. डेविड, डेस्क मधिकारी

New Delhi, the 3rd August, 1992

S.O. 2241.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation, Madras and their workmen, which received by the Central Government on the 27-7-92.

[No. L-30012/18/86-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Thursday, the 26th day of March, 1992

Present :

THIRU M. GOPALOSWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 1 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Indian Oil Corporation Limited, Madras and another).

BETWEEN

Thiru A. T. Sreedharan, No. 6, Purameshwari Nagar, Ennore High Road, Madras-600 081

AND

1. The General Manager, Indian Oil Corporation Limited, Nudamakkam High Road, Madras-600 034.
2. B. C. Caterers, No. 1, Rolaiappan Street, Madras-21 represented by Proprietor N. K. Balan.

APPEARANCE :

Order No. L-30012/18/86-P.III(B), dt. 6-1-1988 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 24th day of September, 1991 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru V. K. Seshukumar, Advocate appealing for the workman and of Tvl. T. S. Gopalan, S. Ibrahim Kalitullah, S. Kovindran and N. C. Sreenivasavardhan, Advocate appearing for Management No. 1 and Management No. 2 being absent and set ex parte and this dispute having stood over till this day for consideration this Tribunal made the following.

AWARD

This dispute between the workman and the management of Indian Oil Corporation Limited, Madras and another arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-30012/18/86-D.III(B), dated 6-1-1988 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Indian Oil Corporation Ltd., in respect of Lube Blending Plant, Drum Plant, Storage and Distribution Plant, Madras in terminating the services of the workman Shri A. T. Sreedharan, w.e.f. 31-12-1982 though the then canteen contractor Shri M. K. Balan and refusing to reemploy him in employment is justified? If not, to what relief the said workman is entitled to?"

2. The Petitioner alleges in the claim statement as follows : Petitioner was employed as a khalasi in the canteen run by the Respondent, who is ranked subsequently as 1st Respondent. The 2nd Respondent B. C. Caterers was impleaded as ordered in Misc. Appln. No. 104 of 1988, dated 1-8-1988. Petitioner joined the said post on 1-1-1978 and was working in the canteen on Rs. 16 as daily wage. He received the wages through a middle man (2nd Respondent) who is a contractor under the 1st Respondent. He was denied employment in the year 1982. His representations have not yielded any fruit. Denial of employment to the Petitioner is illegal and unjust. In the conciliation proceedings before the Central Labour Commissioner, the 1st Respondent Indian Oil Corporation contended that the Petitioner was not an employee under it but was an employee of the Canteen Contractor Mr. M. K. Balan (2nd Respondent). The 1st Respondent's contention that there is no employer-employee relationship between the Petitioner and itself is wrong. The 1st Respondent is liable to reinstate the Petitioner in service and give him all benefits, back wages and continuity of service.

3. The 1st Respondent Indian Oil Corporation through its Senior Industrial Relations Manager states as follows : A canteen has been established by the 1st Respondent for catering to the staff of the plants of the Corporation. The entire management of the canteen was left to a Contractor by name B C Caterers belonging to Mr. Balan. The said contract was executed on 23-11-1981. The 1st Respondent did not employ the Petitioner at any time. The Petitioner has never worked as Khalasi under the 1st Respondent. The Petitioner was an employee of the catering contractor (i.e.) the 2nd Respondent. The claim is liable to be dismissed.

4. The 2nd Respondent who is the canteen contractor has been set ex parte.

5. The point for determination is as follows :

"Whether the action of the management of Indian Oil Corporation Ltd., in respect of Lube Blending Plant Trum Plant, Storage and Distribution Plant, Tendiarpet, Madras in terminating the services of the workman, Shri A. T. Sreedharan on w.c.f. 31-12-1992 though the then canteen contractor N.E. Balan refusing to re-employ him in employment is justified ? If not, to what relief the said workman is entitled to?"

6. The Petitioner examined himself as W.W.1. The 1st Respondent examined its Personnel Deputy Manager (retired) as M.W.1 Exs. W-1 to W-9 and M-1 to M-8 were marked.

7. The evidence of M.W.1 Thiru Balachandran occupied with Ex. M-1 Contract under which Thiru N. E. Balan was appointed as the contractor for running the canteen at the Plants belonging to the 1st Respondent reveals that for the benefit of the workers of the Plants namely selling of food articles within the factory premises, a contractor was appointed to maintain the canteen at his own risk by receiving certain facilities, such as premises, power supply and other articles from the 1st Respondent. The terms and conditions are elaborately set out in clause (4) of the agreement Ex. M-1 Sub-clause (h) of clause (4) clearly says that the contractor should employ the necessary labour at his own costs and responsibility. Sub-clause (a) makes a further elaboration saying that the Corporation is not liable, but only the contractor is liable for all payment to the employees of the canteen. All other statutory obligations and payments should also be met only by the owner of the canteen.

8. The argument put forward by the petitioner on the strength of Section 46 of the Factories Act cannot be of any avail. The case relied on by the petitioner Baraspur Mills Ltd. vs. Ramamalai and others decided by the Supreme Court and reported as A.I.R. 1973 Supreme Court 2297 dealt with a special definition of the word 'employee' given in Bombay Industrial Relations Act, 1946, which stated that even employees of a contractor or middleman engaged by the employer, when such middleman is engaged to do any part of work belonging to the employer, the employee though employed by the middleman becomes the employee of the principal employer. In the instant case, the Petitioner has not relied upon any such statute obtaining in Tamilnadu. Section 46 of the Factories Act only enjoins upon the employer the duty to provide canteen facility. The rules framed under the Factories Act do not prohibit the employer from providing a canteen to the workers through a contractor by entering into an agreement. The case decided by the Madras High Court, workmen of Ashok Layland Ltd., Madras versus Ashok Layland Ltd., Madras and reported as 1991-II L.L.J. 172 upholds the legal position that a co-operative society of the employees of a factory is a separate entity different from the employer and that the employees of the society cannot be treated as employees of the employer-factory. In the present case, the 1st respondent is a separate establishment as against the 2nd respondent. The Petitioner has not produced any evidence to prove that he was a first employed by the 1st Respondent and not by the 2nd Respondent. I therefore hold that the Petitioner Thiru A. T. Sridharan is not an employee of the 1st Respondent and that he was only an employee of the 2nd Respondent who has closed down the canteen. It follows that the Petitioner is not entitled to any relief. This point is answered accordingly.

9. In the result, an award is passed dismissing the claim of the Petitioner Thiru A. T. Sridharan. No costs.

Dated, this 26th day of March, 1992

THIRU M. GOPALASWAMY, Industrial Tribunal

List of Witnesses and Exhibits in LT. 1/88 :

WITNESSES EXAMINED

For Workman :

W.W.1 Thiru A. T. Sridharan.

For Management :

M.W.1 Thiru S. P. Balachandran.

DOCUMENTS MARKED

For Workman :

Ex. W-1/5-8-83 Letter from Petitioner-workman to the Labour Officer-Circle-I, Madras-1, regarding non-employment and illegal termination from continuous service in the Management-Corporation (xerox copy).

W-2/24-10-83 Letter from Petitioner-workman to the Labour Officer-Circle-I, Madras-1, regarding non-employment and illegal termination from continuous service in the Management-Corporation (xerox copy).

W-3/30-8-83—Letter from Management-Corporation to the Labour Officer-Circle-I, Madras-1 regarding non-employment of Thiru A. T. Sridharan (Xerox copy).

W-4/25-7-84 Notification by the Govt. of Tamil Nadu, Labour Department in O.O. Ex. No. 1650 (Industrial Dispute referred for adjudication between India Oil Corp. Ltd., and M/s. B.C. Caters to the II Addl. Labour Court, Madras) (xerox copy).

W-5/22-2-85—Award of II Additional Labour Court, Madras in I.D. No. 491/84 (xerox copy).

W-6/19 9-86 Conciliation Failure Report (xerox copy).

W-7/Price List of the Management's Canteen with effect from 1-4-1985 (xerox copy).

W-8/20-6-86 Price List of the Management's Canteen with effect from 16-6-1986 (xerox copy).

W-9/-Do- Newspaper publication in the 'THE HINDU' dt. 26-12-90.

For Management :

Ex. M-1/23-11-81 Copy of agreement between the Management Corporation and Thiru M. K. Balan.

M-2/1-1-85 Letter from Tube Blending Plant of Management Corporation to M/s. B.O. Caters Canteen Contractors, Madras-81 regarding notice of termination of contract.

M-3/1-2-85 Letter from Lube Blending Plant of Management Corporation to M/s. B.C. Caters, Madras-81 deciding to extend the canteen contract by one month.

M-4/1-3-85 Letter from Lube Blending Plant of Management Corporation to M/s. B.C. Caters, Madras-81 deciding to extend the canteen contract by one month.

M-5/29-3-85 Circular of the Management-Corporation terminating the licence to run the canteen by M/s. B. C Caters, Madras-81.

M-6/5-12-84 Imprest Cash voucher for Rs. 72 for having supplied refreshment to the trainees in the Management-Corporation (In Book).

M-7/-Do- Imprest Cash voucher for Rs. 70 for having supplied the boiled water to the Management-Corporation (In Book).

M-8/5-12-84 Statement showing employees strength during 1-1-78, 1-1-79, 1-1-80, 1-1-81 & 1-1-82.